The Solicitors' Journal

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CONTENTS

CURRENT TOPICS

Professional Standing

THE Master of the Rolls, Sir RAYMOND EVERSHED, in an entertaining speech at the recent annual dinner of the Chartered Auctioneers' and Estate Agents' Institute, said that, looking back over the last three hundred years of the existence of professions, nothing was more striking than the great advancement in professional status. Taking an example from the law, he asked the President whether he saw any very marked development between Uriah Heep and his distinguished colleague, who was present, the President of The Law Society. For the honour of the profession in Dickensian days it is right to remember that Mr. Wickfield, whom Uriah robbed, was also a solicitor, and one of Dickens' most beloved characters, and Mr. Perker, Mr. Pickwick's solicitor, was also highly honourable. Dickens knew more about solicitors than to allow his readers to assume that they were all Heeps or Dodsons and Foggs. The fact remains that, as the Master of the Rolls said, the legal profession has been the subject of great criticism in the past. To-day there is less excuse than ever there has been for adverse criticism. The law and the ethical code governing the profession have never imposed higher standards. The Master of the Rolls said significantly that if standards of conduct are not high nothing else will be high. But, he added, there is a fundamental instinct in human nature to want to achieve the best that is possible, and because that is so, we serve both ourselves and the public by trying to achieve and maintain the best possible standards.

The Profession in Southern Ireland

THE compliment of close imitation is to be paid to the legal profession in England by the introduction of a Bill in the Dail Eireann. Mr. P. R. BOYD, outgoing President of the Incorporated Law Society, at their recent annual meeting in Dublin, said that it was proposed in the Solicitors' Bill that each practising solicitor, when applying annually for his practising certificate, should file a declaration that he was complying and had complied with the provisions relating to solicitors' accounts. Regulations would prescribe that a solicitor should lodge in a separate bank account marked "clients' account" all moneys received by him belonging to clients, or received by him as trustee, and that such moneys should be kept separate and distinct from the moneys belonging to the general office account. There would also be a regulation obliging each solicitor to maintain books which would disclose his financial position in regard to each client. The second important provision related to the setting up of a compensation fund, financed by annual contributions from the profession, to be used for the purpose of compensating any client who suffered financial loss through his solicitor's defalcation. The Minister for Finance had held out hopes, said Mr. Boyd, that when the Bill became law, he would favourably consider the society's application for the appropriation of the stamp duties on articles of clerkship to a fund to be administered by the society for the legal education of articled clerks. The Solicitors' Bill is about to be considered by the Government and it is expected to be introduced into the Dail in the present or the next session.

The Provincial Meeting, 1950

THE current issue of the *Law Society's Gazette* announces that next year's Provincial Meeting of members of The Law Society will be held at Torquay from 26th to 29th September. In order to avoid a clash with "school returning dates," as the *Gazette* calls them, the meeting is being held a week later than in 1948 and 1949, and by this means it is hoped to make easier the attendance of members with children at school. This early announcement of the dates and place of the meeting should go far to ensure a record attendance at Torquay, 1950.

Charities and Income Tax

IN the Commons, on 1st November, Mr. HARDY asked the Chancellor of the Exchequer whether he had any statement to make in view of the decision of the Court of Appeal in the case of the *Oxford Group* v. *Commissioners of Inland Revenue*, which had resulted in the withdrawal of recognition as charities from certain corporations. Sir S. CRIPPS, in a written reply, stated that in view of the fact that the powers, in cases such as those referred to, had in the past been regarded as merely ancillary to admittedly charitable objects, and had accordingly not been called in question by the Inland Revenue, he proposed that, subject to certain conditions, an opportunity should be afforded to such bodies to amend their constitution without being deprived of relief from income tax in respect of the intervening period. The conditions are: (*a*) That the body concerned has hitherto been recognised by the Inland Revenue as a charity for income tax purposes; (*b*) that its status as such is impugned by reason only of the fact that its memorandum and articles include a paragraph or paragraphs in the terms in question or in terms closely approximating to those terms; and (*c*) that before the end of the current income tax year 1949–50 (ending 5th April, 1950), it amends its memorandum and articles to conform with the requirements of the law as now declared by the Court of Appeal. He said that where these conditions are satisfied the Inland Revenue will allow relief in advance of legislative provision which he would propose to introduce in a Finance Bill in due course.

New County Court Fees Order

On 1st January next, the existing County Court Fees Order, 1943, as amended, will be superseded by a new order made on 30th November, the County Court Fees Order, 1949 (S.I. 1949 No. 2230). The order of 1943 is, however, preserved as respects (*a*) proceedings under the Workmen's Compensation Acts, and (*b*) the trial or hearing of, or entry of judgment in, any action or matter or judgment summons which has been commenced or issued but not heard before 1st January, 1950. The new order follows closely the recommendations made in the Final Report of the Committee on County Court Procedure (see *ante*, p. 309).

Minerals Claims: Further Time for Valuations

The Central Land Board have announced that valuation figures for those minerals claims which have to be lodged by 31st December, 1949, can be sent in up to 31*st March*, 1950, and still be eligible for the Board's contribution towards professional fees. It is emphasised by the Board that the Form S.1 must be lodged by 31st December. It should be endorsed by the professional adviser to the effect that he has been retained to complete the valuation questions. He will then be sent a replica of the optional part of the form for completion and return to the Board by 31st March, 1950.

Criminal Sentences

Some of the broader aspects of the problems of punishment were dealt with on 2nd December, by a coincidence, in two places at once. In the House of Commons, Mr. John Maude, K.C., on the adjournment, raised the question of corrective and preventive detention. He said that, on 4th October, 732 men and 36 women were serving sentences of corrective training, and suggested that private meetings should be held at intervals of two years or less at which members of the judiciary would hear from the Prison Commissioners how far it was thought that they were being successful with their sentences. Mr. Benson contrasted the "haphazard rule-of-thumb methods" of penology with the careful diagnosis and research of medicine. Some material for an answer to the question how far sentences are successful was given by the Rev. Martin Pinker, of the Central After-Care Association, on 2nd December, in his evidence before the Royal Commission on Capital Punishment. In the period 1934 to 1938, he said, 129 cases were discharged to the care of the association. Of these, 102 were without, and 27 with, previous convictions. On discharge, 112 settled down immediately, eight settled down fairly well, three went abroad, and four did not settle. Later reports showed that 112 were doing well, but 14 were reconvicted, four of whom had previous convictions. These figures should afford some reassurance to those who profess lack of faith in the ability of judges to award appropriate sentences, but should also encourage members of the bench to make further efforts to get away from "haphazard rule-of-thumb methods."

Judicial Duties

There is no need to tell members of the legal profession that a judge's daily work is not necessarily over at the end of his court's sitting. That there are some people who need to be told this is clear from a statement made by Lord Goddard, on 28th November, in the Court of Criminal Appeal. He said that the court had disposed that day of thirty-five cases, and it was useless to attempt to do more than that. He added that all the cases had to be read through before they could deal with them. It was physically impossible to read more than they did, and if they had tried to read more than the number they had been concerned with that day, which was almost a record, it simply meant that one's brain could not retain the cases. It so happened that on that particular day counsel had appeared in only a few of the cases, which shortened the proceedings, but he hoped that no one would think that, because they had got through their list by half past two, the judges had not been working as hard as they could. All the cases had had to be read over the week-end. He had not had a week-end free from them for a long time, nor had the other judges who sat with him in that court. The Lord Chief Justice's statement will help the public to realise that the work of the judges is arduous, not only in court, where their attention to the demeanour and evidence of witnesses and the arguments of counsel must not relax for a moment, but also in the preparation that precedes the work in court.

International Bar Association: London Conference, 1950

Both The Law Society and the General Council of the Bar are members of the International Bar Association, an association of national legal organisations which now comprises forty member organisations from thirty-five countries. The Association is to hold its third International Conference of the Legal Professions in London between the 19th and the 26th July, 1950, when the General Council of the Bar and The Law Society will act as joint hosts. A joint committee, known as the London Conference Committee, has been set up and is charged with the arrangements for the conference. Volume II, No. 1, of the *International Bar News*, a copy of which we have received, is available, to those interested, on application to the Secretary of The Law Society. It announces that the President-Elect of The Law Society, Mr. Leonard S. Holmes, and the Chairman of the Bar Council, Mr. Godfrey Russell Vick, K.C., have been nominated as co-Presidents and will take it in turns to preside at the conference. The subjects to be discussed cover a wide range, including public and private international law, patents, trade-marks and copyright, as well as legal education and professional ethics. Members of the legal profession are invited to submit papers on any of the listed topics on which they have special competence, but notice of intention should reach the Secretary of The Law Society not later than 1st January, 1950. Papers must be submitted not later than 28th February, 1950.

Scottish Appeals

At the Oxford University Law Society annual dinner, on 10th November, Lord Normand addressed the gathering and said he was often asked whether it was a good thing that there should be an appeal to the House of Lords in matters of Scottish civil law. He said that his answer, unhesitatingly, was that he thought it an admirable thing. "It is a good thing from both points of view; it is a good thing for a body to have to administer, from day to day, more than one system of law. It enables those who have to deal with these matters to take a more comprehensive view of the two systems. It is a good thing, too, for the law of Scotland, which has received from the House of Lords many improvements adapted from the law of England by the great judges who are members of the House of Lords. I am perfectly certain that the people of Scotland and the legal profession have no intention of withdrawing from the right of appeal to the House of Lords. The House of Lords as a final court of appeal, both for the law of Scotland and the law of England, is a great heritage, and we in Scotland have nothing to say in criticism of it." So far as the enrichment of English law is concerned, there can be little doubt that the Scottish appeals have achieved this. A notable example was *Donoghue* v. *Stevenson* [1932] A.C. 562. We now have the high authority of Lord Normand that the benefit operates in both directions.

Recent Decision

In *Anglo-Danubian Transport Company, Ltd.* v. *Ministry of Food*, on 25th November (*The Times*, 26th November), Devlin, J., held that the authorities showed that if a charterer was given an express right to nominate the discharging berth, a nomination once made had to be treated as if it had been written into the charterparty. To permit the charterers to alter a nomination once made would be to allow a unilateral variation of the charterparty.

"AND THE GREATEST OF THESE IS . . ."

BEFORE you pass on this journal or add it to the file copies, may we ask you to give your attention once more to the Christmas appeals? May we ask you to read them with the same care that you devote to an editorial feature dealing with a matter that concerns you professionally? For the appeals *do* concern every reader, not only professionally but personally. "Send not to know for whom the bell tolls . . ."

There was once an Eastern sage who put the whole case for charities in a nutshell. With a truly Oriental mixture of idealism and practical sense he proclaimed: "Anticipate charity by preventing poverty: assist the reduced fellowman by a considerable gift or a sum of money; or by teaching him a trade, or by putting him in the way of business so that he may earn an honest living and not be forced to the dreadful alternative of holding out his hand for charity. This is the highest step and the summit of charity's golden ladder." It is, incidentally, also an excellent programme for any well-conducted charitable organisation—so long as funds are available. Let us take a closer look at some of the modern rungs in this golden ladder.

Although social security is now a public concern, human kindness—or charity—remains a matter for individual enterprise. To-day there is not less scope for charities: there is more. Relieved of some of their more onerous and fundamental obligations, charitable organisations may now be able to devote more time and effort to needs which simply had to be passed by in the days of more acute poverty and distress. For no matter how comprehensive the regulations, how far-seeing and wise the administration, no State as we know it could ever hope to cater for all the human afflictions of mind, body or estate. Nor, we submit, would any generous-minded citizen of this country like to see the State granted the necessary powers and facilities to undertake such a task.

Apart, then, from the great obligations now being shouldered by the State-sponsored social services—and that means, in effect, you and I—what are the actual needs of those for whom the various charitable organisations make their appeal? They need personal help. The blind, the crippled, the orphans, the convalescent; the disabled from two world wars—soldiers, sailors, airmen; the deaf, the dumb, those suffering from incurable diseases; the gentlewomen in reduced circumstances and the ex-prisoners; the ship-wrecked mariners; and doing no less noble work, those organisations caring for the animals—all those who form the subject of appeals for donations or bequests regularly advertised in the columns of this journal call for much more than the "adequate provision" generally envisaged by the State, for much more, too, than the funds requested by the charitable organisations themselves. They call for the personal touch, for kindness, imagination, forethought, not so much from society as a whole, as from ordinary members of society. This is the work of the average charitable organisation, and this is the purpose for which it needs—often desperately needs—money.

Nothing in all this is intended to disparage the value of social security and social services, but rather to emphasise that these admirable projects have in no way eliminated the need for individual generosity. There is always the case not covered by the regulations, the man who does not qualify for a pension, the child who somehow gets left out of things . . .

For many years at this time it has been the custom of THE SOLICITORS' JOURNAL to devote space to collecting together into one personal appeal to readers a case for those who cannot plead themselves and for whom "adequate provision" has not been made by society at large. In order to be fair to all we do not mention any charitable organisation by name, preferring to draw your attention to the people they serve. Almost all the organisations who regularly advertise in these pages depend entirely on voluntary subscriptions. Many solicitors no doubt keep and use that admirable annual, the Charities Register and Digest, and they will be well aware that for all these organisations funds are slender and calls on those funds heavy. The difference between success and failure—between happiness and disappointment—between being able to help and sitting idly by (however regretfully)—can often turn on some slight addition to regular income or on some sudden windfall in the shape of a bequest. To the solicitor this is a double appeal—to his personal, charitable, self, and to his watching brief for his clients who so often seek his advice on these matters.

The various homes and societies which care for the hundreds of infants and young children for whom "there is no room at the inn" are still not subsidised or nationalised, and they still need generous financial help. The Children Act has materially increased the work of the homes, hospitals, schools and societies which look after unwanted, neglected or ill-treated children, and there are still all the children who are deformed, deaf, dumb, blind, mentally defective, or otherwise in need of special care and attention. Lack of money means that many of these children still go without help or receive it under less than ideal conditions.

Children, moreover, need more than care and protection: they need what some would call "vocational guidance," and others "a good start in life." To-day many excellent voluntary organisations and schools supplement the national educational system, carrying on a tradition that was old in the days of William of Wykeham and Henry VI. All of them deserve support, none more than those which cater for the handicapped child, teaching him a trade and guiding him towards self-reliance. As always, the expenses are many, the benefactors few.

It is sometimes too lightly assumed that the National Health Service has ended the need for voluntary aid to hospitals and clinics. It would be a depressing outlook for the sick if such a notion gained ground. The new State service provides funds for maintenance, but voluntary help is still urgently needed for supplementary services outside the scope of the State system. If hospitals are to be comfortable and friendly places as well as efficient organisations, there must be a thousand and one comforts and "extras," all of which cost money. Financial assistance is still urgently needed, not merely by several well-known hospitals but by the great associations which serve many hospitals. The need to-day is probably more urgent than ever it was.

Perhaps even more vital is the need for medical research. In particular, the centres devoted to the cause, cure and control of such dread diseases as cancer and tuberculosis always need financial aid if they are to maintain and extend their work.

Then there are the convalescents, the permanent invalids and the disabled. Pensions and allowances are often pitifully inadequate, comforts and even necessities miserably scarce, for those who have had the misfortune to be laid low by some accident, lengthy illness, nervous complaint or incurable disease. One thinks immediately of infantile paralysis and tuberculosis, but there are many victims of perhaps less "spectacular" but no less terrible complaints. Such sufferers can never hope to catch up with the cost of living; their official allowances certainly never do. Nor should those of us who were fortunate enough to come through the war unscathed ever forget the needs—the just deserts, rather—of those who lost their sight or a limb or their health. These men and women need our help not merely for medical or surgical treatment and for personal comforts but in order that most of them may learn a trade and be provided with employment.

To-day it is widely felt that the blind are not helped by too much emphasis on the tragedy of blindness. The modern aim is to find them a useful function in society—a life as near normal as humanly possible. But all the means by

which this end can be achieved—libraries, radios, guide dogs, braille watches, holidays, games, specially trained teachers and so on—these cost money, and there is no State scheme for the blind. In the whole of the case for charities there is no better example of the supreme value of personal help.

For the legal adviser who is asked to suggest the name of a charitable organisation either for the purpose of a donation or a legacy, there may seem to be a bewildering array of names to choose from. Inevitably, some of the most widely publicised and compelling appeals spring most readily to mind, but it may well be that the very multiplicity of these appeals makes it more desirable—and even easier—for the final recommendation to be appropriate to the interests and means of the intending benefactor. Thus, for professional men there are many benevolent associations devoted to the needs of retired members of the profession concerned, while similar bodies cater for the needs of those who work on the land, ex-servicemen, seamen, printers, and many others. There are also several excellent societies who provide for those about to start their careers, providing hostels and clubs, or advancing grants of money.

In a country noted for its love of animals it is often distressing to read so many stories of their ill-treatment or neglect. There are, of course, several very well-known societies which exist for the sole purpose of preventing this type of cruelty and of providing care and treatment for sick animals, but how often is it realised that these bodies could not carry on their work without regular voluntary financial assistance? This is a need which no animal lover should pass by.

Here, then, is some of the evidence in the case for charities. One other point needs to be made. The contention expressed in the old *dictum* "cold as charity" cannot be too strongly refuted. The picture it conjures up of gloomy institutions, tight-lipped boards of governors and downtrodden paupers is now a faded memory. The modern charitable organisation is efficient, sympathetic, enlightened and above all enthusiastic about its job. Like that Eastern philosopher it combines idealism with common sense, and keeps a firm grip on the golden ladder.

And before you put this down may we remind you once again about reading these Christmas appeals?

THE LICENSING ACT, 1949

Now that the time for Brewster Sessions once more approaches, it is opportune to consider the effect of the Licensing Act, 1949, so far in particular as it affects the procedure on application for a new justices' licence.

Part I of the Act deals with State Management Districts, and is therefore special rather than general in its application; it is accordingly not proposed to deal with it in this article.

Part II will in due course effect considerable alterations as regards the constitution and procedure of licensing authorities, but, as this Part of the Act is only to come into operation on such date as the Secretary of State may by order appoint, it is unlikely to become effective until after Brewster Sessions have been held in 1950.

Part III of the Act, which is already in force, contains a variety of provisions; ss. 18–23 provide for the grant by the licensing justices of what is to be known as a "special hours certificate" in respect of certain licensed premises and clubs in the metropolis, the effect of which will be that in respect of those premises the permitted hours will be from 12.30 to 3 p.m., and 6.30 p.m. to 2 a.m. (except on Sundays when the permitted hours will remain unchanged), but if music and dancing are not provided after midnight, permitted hours will cease at midnight; or if music and dancing cease between midnight and 2 a.m. the permitted hours will cease coincidentally.

A blow is aimed at bottle parties by ss. 24 and 25, which prohibit the supply or consumption of intoxicating liquor outside permitted hours at "any party organised for gain and taking place in premises kept or habitually used for the purpose of parties so organised at which intoxicating liquor is consumed." An exception is made in respect of licensed premises, canteens, messes, registered clubs, and parties covered by an occasional licence. Power is given to a justice of the peace to issue a warrant authorising the police to enter and search any premises suspected of being used in contravention of this provision.

Other sections of the Act deal with various offences under the Refreshment Houses Act, 1860, the penalties for which are increased; the removal of off-licences; the employment of persons under eighteen years of age in bars, which is prohibited; the suspension of licences where the business has been carried on in temporary premises and is discontinued; and permitted hours in the metropolis, which are to end not earlier than 10.30 p.m.

Section 28 of the Act amends the law as regards retail sales without a justices' licence. Retail off-sales require a retailer's licence from the Customs and Excise authorities, and such a licence can normally only be granted if a justices' licence has first been obtained. By s. 111 (1) of the Licensing (Consolidation) Act, 1910, however, a dealer may be granted a retailer's off-licence for spirits or wine (but not for beer) without a justices' licence if his premises are used exclusively for the sale of intoxicating liquors and non-intoxicating drinks, and have no internal communication with the premises of any other person who is carrying on any other trade or business.

The maximum quantities which may be sold at any one time to any one person under a retailer's licence, however granted, are two gallons or one dozen reputed quart bottles in the case of spirits, wine, or sweets, and 4½ gallons or two dozen reputed quart bottles in the case of beer or cider. Corresponding minimum quantities in respect of such sales are one reputed quart bottle in the case of spirits (or one reputed pint bottle if the excise licence was granted in pursuance of a justices' licence) and one reputed pint bottle in the case of wines, and in both instances sales in open vessels are prohibited. These maximum and minimum quantities are prescribed by the Finance (1909–10) Act, 1910, Sched. I(C) and s. 22 of the Finance Act, 1933.

Incidentally, the measures "one reputed pint" and "one reputed quart" are nowhere defined in the Licensing Acts or the Finance Acts. By custom in the trade, however, there are twelve reputed pints to a gallon, and one reputed quart is, of course, two reputed pints, so that a reputed pint or a reputed quart is considerably less than the corresponding imperial measure. An ordinary half-size bottle of whisky or gin contains one reputed pint, and it is therefore lawful for a dealer holding a retailer's off-licence to sell whisky or gin in half-bottles if, and only if, he is the holder of a justices' licence; if his retailer's licence was granted to him under s. 111 (1) of the Act of 1910, he cannot sell spirits in quantities of less than a whole bottle at a time.

By s. 28 of the new Act, however, the operation of s. 111 (1) of the Act of 1910 is henceforth to be limited to the sale by retail of spirits or wine (*a*) to the holder of an excise licence, or (*b*) to a mess or registered club, or (*c*) for delivery outside Great Britain, or (*d*) to a person engaged in any business carried on by the dealer.

Save in these circumstances, and for certain exceptional cases set out in s. 111 (2) of the Act of 1910, therefore, it will now always be necessary for a retailer to obtain a justices' licence before he can be granted an excise licence for the sale of intoxicating liquor; and this will, of course, apply to retailers who have previously sold under an excise licence granted without a justices' licence by virtue of s. 111 (1) of the 1910 Act, as outlined above. To safeguard the position of such retailers, however, s. 28 of the new Act provides that they may apply at Brewster Sessions in 1950 for the requisite justices' licence, and that such application "shall be treated . . . as if it were an application for the renewal of such a

justices' licence . . . and the provisions of the Act of 1910 as to the renewal of justices' licences shall apply accordingly."

In the meanwhile, pending application to Brewster Sessions in 1950, sales may continue under an excise licence granted under s. 111 (1) of the 1910 Act, provided that such an excise licence has been continuously in force since 15th November, 1948. If the requisite licence is granted at Brewster Sessions this period will be automatically extended until 5th April, 1950, on which date the justices' licence will take effect.

On the hearing of his application at Brewster Sessions, the dealer must prove (*a*) that since 15th November, 1948, an excise licence under s. 111 (1) of the 1910 Act has been continuously in force; and (*b*) that the licence authorised the sale of liquor of the description in question. These facts can be proved by the production of a certificate purporting to be signed by a duly authorised officer of the Customs and Excise.

As to the precise procedure which is to be adopted on the making of such an application, the Act gives little or no guidance. It can be argued that, on the wording of the section as quoted above, all that the applicant need do is to apply in form as for a renewal. In the writer's opinion, however, this argument is fallacious. The application is in essence an application for a new licence, and before such an application can be entertained by the licensing justices certain preliminary steps have to be taken; these steps are set out in s. 15 of the Act of 1910, and were outlined in an article which appeared in this journal on 11th December, 1948 (92 SOL. J. 698). Briefly, twenty-one days' notice must be given to the clerk to the licensing justices, the police and the local council; the application must be advertised in a local paper; and notice must be affixed on the door of the parish church or (s. 38 of the new Act) on "some public and conspicuous place near the door thereof."

The view that this is the correct procedure is fortified by the consideration that, since the application is for a new licence which will confer privileges not previously held by the applicant, it is obviously right that public notice of the application should be given so that any who wish to oppose should have an opportunity to do so.

Further, it is understood that the Home Office, without expressing any view as to the correct procedure on an application for a justices' licence under s. 28 of the Act of 1949, propose to circularise holders of excise licences under s. 111 (1) of the Act of 1910 to the effect that they would be well advised, as a matter of precaution, to give the notices required on a normal application for a new justices' licence.

Once the application for a new licence, complete and regular in form, comes before the licensing justices, however, it is to be treated as an application for renewal. Accordingly, subss. (2), (3), (4) and (6) of s. 16 of the Act of 1910 apply, namely: (1) the applicant need not attend personally unless required to do so by the licensing justices for some special cause personal to himself; and (2) no objection can be entertained and no evidence can be taken unless seven days' written notice of the grounds of opposition to the application have been served on the applicant, or unless the application is adjourned and the attendance of the applicant is required; and (3) all the evidence must be given on oath.

The new Act does not in any way alter the discretion of the licensing justices to grant or refuse the application; their discretion, as in the case of an ordinary application for renewal of an existing licence, remains unfettered, but there is, of course, a right of appeal to quarter sessions from a refusal of the application (s. 29 of the 1910 Act); notice of appeal must be given, in writing, to the clerk to the licensing justices within five days after the decision appealed against.

Since the application is treated as if it were for a renewal, it would seem that, if granted, confirmation by the confirming authority will not be required.

It is no doubt a good thing in the public interest that the control of the licensing justices should be extended to those retailers who have hitherto sold under an excise licence granted in pursuance of s. 111 (1) of the Act of 1910. The retailer, too, will benefit in that he will be less restricted as regards the minimum quantities which he is permitted to sell, and as to the use of his premises exclusively for the sale of intoxicating liquor and non-intoxicating drinks; but, none the less, it is possible that practical difficulties may arise. For instance, it is common practice for licensing justices to require applicants for off-licences to give an undertaking as to the manner in which they will carry on their business. The most usual undertakings relate to limited hours of sale, or sale in bottles only, prohibit Sunday trade, or provide that the products of several brewers shall be stocked. If the applicant in the ordinary way refuses to give any undertaking properly asked for, the justices may decline to grant the licence; and any breach of good faith after the licence is granted can be taken into consideration by the justices on any subsequent application for a renewal or transfer (*R.* v. *Beesly* (1912), 77 J.P. 19).

In the case of an application under s. 28 of the new Act, *prima facie* the application should be granted since the business is already established and is therefore presumably fulfilling a local need. On the one hand, therefore, the applicant may be reluctant to give an undertaking limiting his rights under an off-licence, and on the other hand the licensing justices may consider that to grant him an off-licence free of restrictions would be unfair to other off-licensees in the neighbourhood who have freely given restrictive undertakings as required by the justices. Should such a position arise it will, of course, have to be dealt with on its merits, but it is perhaps appropriate to express the view that the applicant, who will in any event obtain substantial advantages if granted a justices' off-licence, should not be unduly obstinate if asked to fall into line with the other off-licensees in the area.

E. G. B. T.

LEGAL CHARITY: SOME DECISIONS OF 1949

THE recent announcement that the Prime Minister is to appoint a committee to inquire into the law relating to charitable trusts in England and Wales may be taken as signalising a substantial measure of agreement with the Government view that the present law on the subject is anomalous. Unseemly haste in legal reform has not so far been numbered among the failings of any Government of this country. But however strongly solicitors, in particular, may agree with this hardly original criticism of the state of a highly technical branch of the law, they must continue for many months, perhaps years, to count among the ingredients of their professional knowledge an appreciation, so far as that is humanly possible, of the guiding principle of the present law. Lord Simonds has remarked (*Gilmour* v. *Coats* [1949] 2 All E.R. 848) that this principle is vaguely stated and liable to be differently interpreted in different ages. It is derived, his lordship reminds us earlier in the same speech, from a statute whose aim was not so much the definition of charity as the correction of current abuses. It is only in its preamble that the statute, 43 Eliz., c. 4, attempts anything in the nature of a definition, and that consists merely of an enumeration of certain charitable objects. Nevertheless, as Lord Simonds emphasises, only those objects which are either included in that enumeration or by analogy are deemed within its spirit and intendment are in law charitable. It has to be remembered that even the Romilly–Macnaghten classification of charitable objects under four heads ((1) poverty, (2) education, (3) religion, (4) other purposes beneficial to the community), valuable as it has proved, is of derivative and not original authority.

The Relevance of Legal Recognition

The badge of charity is nowadays mainly sought because of the consequent exemption from certain taxation, including some stamp duties (see Finance Act, 1947, s. 54 (1) and *Polish Combatants' Association, Ltd.* v. *I.R.* (1949), *ante*, p. 513).

Apart from this, the rules against remoteness of limitation do not generally apply to charitable trusts, nor if a general charitable intention is manifested by the terms of a disposition will it fail on the score of vagueness in its particular expression. On the other hand, restrictions under the Mortmain legislation attach only if the assurance in question *is*, properly construed, for charitable purposes. The provisions of s. 87 (2) of the Education Act, 1944, also need to be borne in mind by those acting for education authorities and educational trusts; and that subsection (which, under pain of avoidance, renders assurances of land, or personal estate for the purchase of land, registrable with the Minister of Education if the land or its income is to be used for educational purposes) has been held by Jenkins, J., to bind even the previously privileged universities and colleges (see *Re No. 12 Regent Street* [1948] Ch. 735).

The case of *Gibson* v. *South American Stores* [1949] Ch. 572 disclosed an unusual reason for inquiring into the charitable nature of a trust. The point was material there because if the trust in question had not been charitable it would have been void, and there would have been nothing to prevent the donors, as beneficiaries under the resulting trust, from rescinding the trust deed and resuming control of the fund. As we propose to explain later, Harman, J., held that the trust was a valid charity and further that the donors were not entitled to revoke it. The fund had been devoted from its inception to a charitable purpose. His lordship indicated that a case of the application of property to charity *sub modo* or conditionally on the happening of an event might lead to a different result.

The Advancement of Religion

Under this head we may briefly note the most important of the recent charity decisions, that of the House of Lords in *Gilmour* v. *Coats*, *supra*. There is nothing novel in the actual decision; it affirmed that of the Court of Appeal (see an article in 92 SOL. J. 211) which in its turn had approved one branch of the well-known judgment of Wickens, V.C., in *Cocks* v. *Manners* (1871), L.R. 12 Eq. 574. The long and undisputed standing of *Cocks* v. *Manners* weighed heavily, it seems, with the House of Lords, but their lordships had to consider evidence and arguments not advanced in that case, for the Carmelite nuns of whom the appellant, Miss Gilmour, was the prioress were concerned to establish that their purposes were legally charitable, the reverse of the contention for which their sisters strove in *Cocks* v. *Manners*. The Carmelite nuns live in complete seclusion and engage in no practical or outside work, charitable or otherwise. They engage in prayer and in the love and contemplation of divine things. The House of Lords held that this is not in the eyes of the law a valid charitable purpose, as it lacks the element, indispensable in any charitable trust, of public benefit. The requirement of public benefit was not satisfied by proof that in the belief of the Roman Catholic Church the prayers of the nuns would benefit mankind generally. The opinion of the donor is immaterial on the question of legal charity, not less so when the opinion is based on the religious belief of a church to which he belongs (see *per* Lord Reid, at p. 861). This proposition is to be carefully distinguished from any selective tendency on the part of the law as to the particular religious faith which by a valid charitable religious trust is sought to be advanced. "In the eyes of the court all established and accepted religions stand equal," Evershed, L.J., had said in the court below. Their tenets, nevertheless, are not legally proved facts.

Two other contentions put forward on behalf of the prioress as supporting the view that the trust was for the public benefit were also rejected by the House. It was not sufficient that the example of piety displayed by the nuns was such as would have an edifying effect on the world at large. That was something too vague and intangible. Nor was it material that admission to membership of the convent was open to any Roman Catholic woman having the necessary vocation.

The Relief of Poverty

It was under this head that Harman, J., admitted the trust in *Gibson* v. *South American Stores*, *supra*, to recognition as a valid charity. The trust deed provided that a fund, formed by setting aside annually a percentage of the profits of a company, should be applied for such members of a designated class of beneficiaries as the board of directors of the company should from time to time direct and might (without prejudice to generality) be used for gratuities, pensions or allowances. The class of beneficiaries was to include all persons who in the board's opinion were necessitious and deserving, and who were or had been in the employ of the company or its agents or subsidiaries, and the wives, widows, husbands, widowers, children, parents and other dependants of such persons. As in practically all charity cases, there was a primary question of construction, and the learned judge answered this by saying that in his judgment the class of beneficiaries must all, whether employees or dependants, satisfy the requirement of being necessitous and deserving. This, then, was a fund devoted to the relief of poverty.

But that conclusion still left for decision whether the object was private benevolence or whether a sufficient element of public benefit was present to entitle the trust to be considered as in law a charitable one. There is a link here with *Gilmour* v. *Coats*, in which Lord Simonds had said that though some public benefit must always be present, the measure of that benefit was not necessarily the same for every category of charitable purpose. The law of charity had been built up not logically but empirically. The decision of Harman, J., in *Gibson's* case implements this *dictum*. The "poor relation" cases (e.g., *Spiller* v. *Maude* (1864), 11 L.T. 329; *Re Gosling* (1900), 48 W.R. 300; *Re Buck* [1896] 2 Ch. 727), in which a gift in relief of poverty was held a good charitable gift though the beneficiaries were confined to the members of a particular firm or society, have hitherto been treated as anomalous. Lord Greene has indeed suggested (*Re Compton* [1945] Ch. 123) that to relieve even one man's poverty is to benefit the whole community. Harman, J., emphasising that he is dealing with a poverty case and not with any other category, holds that the employees and ex-employees of the South American Stores, Ltd., and its agents and subsidiaries and their dependants form a sufficiently wide class to constitute a public element, and accordingly that the trust is charitable. In the case of categories other than the relief of poverty, a much less narrow class of beneficiaries is essential (see *Re Compton*, *supra*, and *Re Hobourn Aero Components, Ltd.'s Air Raid Distress Trusts Fund* [1946] Ch. 194).

General Public Purposes

Under this fourth Macnaghten head comes a number of recent cases of which we may select *Re Strakosch, decd.* [1949] Ch. 529 for principal treatment. The gift in this case was in these terms: "I direct that the trust fund . . . shall be held upon trust to be applied by my trustees to a 'fund' for any purpose which, in their opinion, is designed to strengthen the bonds of unity between the Union of South Africa and the Mother country and which incidentally will conduce to the appeasement of racial feeling between the Dutch and English speaking sections of the South African community." Roxburgh, J., held that this clause laid down two requirements in the application of the fund. The object benefiting must be designed to strengthen Anglo-South African unity and at the same time must conduce to better Anglo-Dutch relations in South Africa. His lordship held that the first of these requirements did not necessarily involve a good charitable purpose, and commented that there was no evidence before him which enabled him to hold (as he was invited to hold) that the second requirement could only be fulfilled by a mode of application which had as its purpose the prevention of strife. His decision, reached with regret, was that the gift was not a valid charitable gift, a view which was shared by the Court of Appeal.

Between the two hearings the parties contending that the gift was charitable had followed up the learned judge's

reference to the lack of evidence on the second requirement, and the Court of Appeal took into consideration an affidavit made by Field Marshal Smuts. They also heard arguments from counsel representing the Union Government. But while the court accepted the Field Marshal's views as to the most effective method of achieving the testator's objects, Lord Greene, M.R., pointed out that the question at issue was not the best method of application. It was how, on the true construction of the gift, it would be permissible to apply the fund. Though Field Marshal Smuts thought that the proper method of appeasing racial feelings was by education in its widest sense, the court found it impossible to construe the gift as confined to educational purposes. This part of Lord Greene's judgment yields the valuable "pointer" that a trust might be valid as an educational trust notwithstanding that the education had the ultimate aim set out in the will.

In affirming the decision of Roxburgh, J., the Court of Appeal emphasised that a purpose is not necessarily charitable under the fourth head of the Macnaghten classification merely because it is of public benefit. It must benefit the community in a way which the law regards as charitable, which is to say, that it must be within the "spirit and intendment" of the preamble to the Elizabethan statute. In other words, it must be beneficial in the same sense as the purposes enumerated in the preamble. The court quotes the words of Lord Haldane in *A.-G.* v. *National Provincial Bank, Ltd.* [1924] A.C. 262: "In the case of a gift for charitable purposes there is a desire to profit people who would not be profited without your gift—that is the dominant motive. In the case of patriotism there is a desire to fulfil one dominant purpose, that is to benefit the cause of the country to which you belong." The appeasement of racial feeling was, the Court of Appeal thought, within the latter class of case.

It is not to be assumed that patriotic motives, if suitably expressed, cannot be implemented in a good charitable gift. Readers will no doubt remember the recent report in *The Times* (18th November, 1949) of *Re Driffill, decd.*, where Danckwerts, J., held charitable a gift in a will made in 1916 devoted to the promotion of the defence of the United Kingdom against hostile air attack. In *Re Strakosch, decd.*, the court goes on to examine other cases in which general gifts for the benefit of a particular district or country have been upheld as charitable. But these were to be construed, in the opinion of the court, as restricted to benefits which are charitable in law. The same principle could not be applied where, as in the case before them, the purpose was expressed.

A passage in the judgment of Roxburgh, J., is thus impliedly approved. That learned judge had said ([1947] 2 All E.R., at p. 608): "Although a testator can safely declare a trust for the benefit of a community without giving any further indication of the manner in which the benefit is to be conferred, if he departs from this safe path, his trust will fail unless it can be predicated of every mode of application which would fall within the ambit of the trust that it is not only beneficial to the community, but also charitable." Now at first sight it might perhaps be questioned whether that statement is consistent with a decision of the Court of Appeal in *Re Hood* [1931] 1 Ch. 240. The headnote in that case epitomises the decision in this way: "*Held* . . . that the main object of the gift, namely, the advancement of the application of Christian principles to all human relationships, being charitable, the gift was none the less valid because the testator had pointed out one of the means by which, in his opinion, that main object could best be obtained and which in itself might not have been charitable if it had stood alone." From the report we find that the "means" pointed out by the testator were "the aiding of all active steps to minimize and extinguish the drink traffic," and the objection urged to them was that the support of political and legislative measures might be involved. The headnote, it may be remarked, covers only one of two alternative grounds on which all the members of the Court of Appeal based their unanimous judgment. They all expressed the opinion that a gift to promote temperance was undoubtedly good in the law of charity, so that the last fourteen words of the headnote (which is taken verbatim from Lawrence, L.J.) are based upon a hypothesis which need never have been considered. However, the present intention is not to suggest that the headnote is wrong. The important phrase is the opening one, referring to the main object of the gift. "If the object and the means indicated are clearly charitable, then the court is not astute to look for possible, but subsidiary, non-charitable means which might be within the words used," says Lord Greene, and cites *Re Hood* in support.

At all events this much may be said of the passage quoted from the judgment of Roxburgh, J. In *Re Hopkinson, decd.* (1949), 93 Sol. J. 87, approval is expressed by Vaisey, J., of a later *dictum* by Roxburgh, J., to a similar effect. That expression of approval is reported in the very paragraph of the judgment of Vaisey, J., in which the learned judge dismisses *Re Hood* as irrelevant to the proposition he is considering.

J. F. J.

Taxation

CHARITIES AND INCOME TAX

It may be said generally that a trust or company established for charitable purposes only is exempt from income tax. It is not assessable in respect of untaxed income, and it can make a tax repayment claim in respect of income received under deduction of tax, such as interest, dividends and rent (Income Tax Act, 1918, s. 37). But this general statement requires qualification, and it is proposed to examine below cases in which a charity may be liable to pay income tax.

A charity making annual payments which are within General Rules 19 and 21, such as mortgage interest, must deduct tax and account to the revenue therefor; or occupying land as a tenant at a rent, it must pay Sched. A tax and deduct the amount from the next payment of rent. These are only instances of the machinery of collection of tax at source, and no substantive liability is imposed on the charity.

Although land owned and occupied by a charity is generally exempt from Scheds. A and B tax, yet if the property is in the use and enjoyment of a person whose total income from all sources amounts to not less than £150 per annum, Sched. A tax (and Sched. B, if appropriate) is payable (Finance Act, 1921, s. 30 (2)). This tax would fall to be paid by the charity, for it is technically in occupation, and not by the person having the use and enjoyment of the property. An illustration would be the case of a secretary receiving pay above the stated limit, who occupied a flat within the premises of the charity so as to be on hand for the performance of his duties. This must be distinguished from a case in which a charity let part of its premises to a tenant, even an employee-tenant; in that case the occupation would be that of the employee, and he would pay the Sched. A tax, the burden of which would also fall on him if he lived rent-free, or which he would pass on to the charity by deduction from his rent if any were payable, and the charity would recover the tax so deducted by way of repayment claim.

Special rules apply (under No. VI of Sched. A) to buildings belonging to the college or hall of a university, to a hospital, charitable school or almshouse, and to a literary or scientific institution. In the case of the university the exemption is lost if a building is occupied by an individual member; in the case of the hospital, school or almshouse, if occupied by an officer or the master of the institution whose total income is £150 or more; and in the case of the literary or scientific institution, if occupied by an officer thereof.

As regards the profits of a trade carried on by a charity, it is not sufficient to escape assessment that the profits are applied solely to the purposes of the charity, but in addition

it must be shown either that the trade is exercised in the course of the actual carrying out of a primary purpose of the charity or that the work in connection with the trade is mainly carried on by beneficiaries of the charity (Finance Act, 1921, s. 30 (1) (*c*), as amended by Finance Act, 1927, s. 24). For instance, an institution for the advancement of religion which sold devotional books would doubtless escape assessment on the profits by showing that the dissemination of religious views was a primary purpose of the charity, and might also be able to escape on the ground that the work of selling was done by the beneficiaries of the charity, if such was the case; but if the institution were to open a public restaurant, staffed by outside employees, for the purpose of supplementing the funds of the charity by means of profits made, there would be no exemption from assessment to tax.

A charity established abroad is not entitled to exemption from United Kingdom tax on its income arising in this country (*C.I.R.* v. *Gull* (1937), 21 T.C. 374).

C. N. B.

Costs

CONVEYANCING SCALES: WHEN APPLICABLE—VII

We have now dealt with a number of the points which arise in connection with remuneration in respect of completed transactions, but before we leave the subject there are one or two further points with which we must deal.

There is, in the first place, the question of a varying rent. Following the second scale of Sched. I, Pt. 2, is a note to the effect that where a varying rent is payable the amount of the annual rent, for the purpose of calculating the scale fee, is to mean the largest amount of annual rent provided for in the lease.

It might be contended that, since this note follows the second scale, it must be deemed to be incorporated in and applicable only to that scale. This, however, does not necessarily follow, and from the general construction of the order it seems to be reasonably clear that where the highest rent provided in a lease in fact represents the rack-rent, then the fee under the first scale should be calculated on the highest rent.

This position might arise because of a lack of amenities in the earlier years which are later expected to develop and mature. Whatever the reason for the varying rent, the fact remains that a custom has arisen and has now become established of charging the scale fee on the highest rent, even under the first scale, where the lease provides a varying rent.

Thus, if a property is let on a twenty-one years' lease, the rent for the first seven years being £200, for the next seven years £250, and for the last seven years £300, then the scale fee will be fixed by reference to the annual rent of £300.

The second point is in regard to the so-called additional rents that are frequently included in a lease but which are, in fact, merely remuneration for services. Thus, it is by no means unusual to find in a lease provision for an annual rent of, say, £300 together with a further sum of £50 by way of additional rent to cover the cost of cleaning the premises.

We must not, however, be misled by the label. Although called a rent this additional sum of £50 is really nothing more or less than a charge for cleaning services, and such a charge is not covered by the scale fee under Sched. I of the Order of 1882, which can only apply to the letting of property as distinct from the provision of services.

So much then for the costs in respect of leases. It may be noticed in passing that the common practice of renewing a lease by a memorandum endorsed on the original lease does not warrant a scale fee under Sched. I, Pt. 2. This scale remuneration, it must be borne in mind, is to cover the work involved in preparing, settling and completing a lease (see the headnote to the scale), and a mere endorsement on an existing lease, extending its life for a further term, can hardly be brought within these words. In such cases the remuneration should be calculated according to Sched. II. Moreover, since the scale does not apply, then the rule that the lessee's remuneration shall be one-half of the amount payable to the lessor's solicitors will not apply also.

We have seen from r. 8 of the rules applicable to Sched. I, Pt. 1, that the minimum charge is £5 plus, of course, 50 per cent. now, except where the transaction is less than £100, in which case the minimum charge will be £3 (plus 50 per cent.).

Under Pt. 2 of Sched. I, a minimum charge of £5, plus 50 per cent., is provided in respect of a rent falling under either the first or the second scale. It seems from this to be reasonably clear that where a lease is granted in consideration for a rent and a premium, then it may be possible for two minima to be chargeable.

Thus, if a lease is granted for ninety-nine years in consideration of a premium of £150 and an annual rent of £3, then the lessor's solicitors would be entitled to £5 in respect of the premium and £5 in respect of the rent, together amounting to £10, to which must be added 50 per cent., giving a total of £15. As stated, the matter seems reasonably clear, but objection was taken to this interpretation of the rules in *Re Hellard and Bewes* [1896] 2 Ch. 229. The taxing master overruled the objection, however, and his decision was upheld by the court.

At this juncture it may be convenient to observe that the rule to be applied in these minimum scale cases is that where there are two scale charges in respect of one transaction and both of those scale charges fall within Pt. 1 of Sched. I, then one minimum fee only is chargeable, but that where there are two scale charges, and one falls within Pt. 1 and the other within Pt. 2, then two minima may be chargeable, or a minimum charge under one Part and a scale charge under the other Part.

Thus, if a solicitor negotiates and secures a sale of property for £200, and deduces the title to the property, then his charges according to scale would be (*a*) for negotiating, £200 at 20s. per cent., £2; and (*b*) for deducing, £200 at 30s. per cent., £3, a total of £5, and this, plus 50 per cent., is all that he would be entitled to charge. He would not be entitled to the minimum charge of £5 in respect of negotiating and another minimum charge of £5 in respect of deducing.

On the other hand, if the solicitor for a lessor acts in connection with a lease for ninety-nine years which provides for a premium of £1,000 and an annual rent of £2 10s., then his charges in connection with the premium would be £22 10s., and in respect of the rent the minimum charge of £7 10s.

So much then for the scale charges. We shall have occasion to revert to some aspects of scale remuneration for conveyancing work in later articles, but in the meantime we must consider a few points that have arisen from time to time with regard to Sched. II.

First, let us consider what work is covered by Sched. II. The scope of Sched. II is stated in the General Order made pursuant to the Solicitors' Remuneration Act, 1881, para. 2 (*c*). In the first place, the item remuneration provided by Sched. II will apply to all work in connection with matters which, if they had been completed, would have been remunerated according to Sched. I. The provision then goes on to provide for certain specific work to which Sched. II applies, including mining leases, settlements, transfers of mortgages, and " all other deeds and documents " and " all other business the remuneration for which is not hereinbefore or in Sched. I hereto prescribed."

Little difficulty arises over the remuneration for work in relation to incomplete sales, purchases, mortgages and leases, or in respect of settlements and other specified documents. Precisely what is included in the term " all other

deeds and documents " has been the subject of contention, however, and, for example, in the case of *Re R. A. Parker* (1885), 29 Ch. D. 199, it was held that abstracts of title did not come within the description so as to entitle the solicitor to a charge of 1s. per folio for perusing.

Schedule II provides a charge of 2s. per folio " for drawing," and difficulties have arisen on many occasions as to the documents to which this charge relates. Thus, in *Re Reade; Salthouse* v. *Reade* (1889), 33 SOL. J. 219, it was held that 2s. per folio was a proper charge for drawing particulars of sale in connection with a sale by auction. Again, in *Re R. P. Morgan & Co.* [1915] 1 Ch. 182, it was held that 2s. per folio was a proper charge for drawing a case to counsel, notwithstanding that the opinion of counsel was taken in contemplation of litigation. This decision followed the rule laid down in *Re Mahon and Sayer* [1893] 1 Ch. 507, where North, J., held that a case to counsel was a document within the meaning of Sched. II. The objection to allowing 2s. per folio in *Re R. P. Morgan & Co., supra*, was based on the reasoning that that charge was reserved exclusively for conveyancing work, but Neville, J., did not agree. His lordship stated that in his opinion " conveyancing business, whether in an action or not, and other business not being conveyancing business, and not being business in an action nor contentious business, comes within the scope of the rule and scale."

That clears up one point, only to give rise to another, namely, what amounts to contentious business, and we will consider that question in our next article.

In the meantime, we may notice that Sched. II provides a fee of 1s. per folio " for perusing." Here again, difficulties have arisen as to the documents to be included in this charge. Thus, in *Re Robertson* (1887), 19 Q.B.D. 1, a solicitor who had perused title deeds of property for the purpose of advising on a mortgage, charged for the work at 1s. per folio. The taxing master disallowed the item, and his decision was upheld by the Divisional Court. The court differentiated between the case of a solicitor who peruses deeds and other documents for the purpose of advising thereon, and the solicitor who peruses draft deeds and other documents for the purpose of engrossing. In the latter case each word must be perused with meticulous care, and it is to this latter type of work that the charge of 1s. per folio relates.

We will consider other aspects of Sched. II in our next article.

J. L. R. R.

A Conveyancer's Diary

BEQUESTS TO NATIONALISED HOSPITALS

SINCE I last wrote on this subject the decision of Harman, J., in *Re Kellner's Will Trusts* [1949] Ch. 509, which formed the main topic of my previous " Diary " (see p. 560, *ante*), has been reversed on appeal. A report of the judgment of the latter court will be found at p. 710, *ante*.

To recapitulate the facts very briefly, by her will dated the 18th June, 1948, the testatrix gave her residuary estate to her trustee upon trust to divide it equally between several named charitable institutions, one being the Royal Cancer Hospital in London. The testatrix died on the 23rd June, 1948, that is, shortly before the 5th July, 1948, the day appointed for the coming into operation of the National Health Service Act, 1946. The Cancer Hospital was one of the voluntary hospitals transferred to the Minister by the Act; and it was designated by the Minister as a teaching hospital. The significance of this designation was that under the general provisions of the Act the management of the hospital was thus vested in a board of governors and not, as in the case of non-teaching hospitals to which the Act applies, in a regional board of management or hospital management committee.

The testatrix's trustee, being in some doubt as to the effect of the Act on this bequest, took out a summons asking whether, on the true construction of the Act, the right to receive the share of residue destined by the testatrix for the Cancer Hospital vested in the Minister of Health under s. 6 of the Act, or in the board of governors under s. 7, or whether the trustee was required to apply the share in paying the capital and income thereof to the board of governors under s. 60. Now the Court of Appeal concurred with Harman, J., in holding that neither s. 6 nor s. 7 applied to this bequest. I will not repeat what I said earlier concerning these sections in this context, but briefly s. 6 provides for the vesting in the Minister on the appointed day of all the physical assets of any hospital affected by the Act, whether teaching or non-teaching, and s. 7 deals with the endowments of affected hospitals by providing for the vesting of all endowments, as there defined, in the case of a teaching hospital, in the board of governors of that hospital, and in the case of non-teaching hospitals, in the Minister. Harman, J., analysed these provisions in his judgment and found them to be inapplicable, and he held, accordingly, that the testatrix's bequest to the Cancer Hospital did not vest in the Minister as part of the hospital property under s. 6, nor did it vest in the board of governors of the hospital as part of its endowment under s. 7, and this part of his judgment was adopted and approved by Evershed, M.R., who delivered the main judgment in the Court of Appeal.

The divergence between the two courts appeared in their respective conclusions on the applicability of s. 60 of the Act. Harman, J., found no assistance in this provision, and he decided, accordingly, in reference to the last question raised by the summons, that the section did not authorise or require the testatrix's trustee to apply the capital and income of the share in question in paying it to the board of governors of the hospital; but having found a charitable intention in the bequest, he held that the bequest in favour of the hospital had not lapsed entirely, but should be admitted under the sign manual. The Court of Appeal differed on this point, and it is therefore necessary to consider this section in some detail. It provides that where property, other than property transferred under other provisions of the Act, is held on trust immediately before the appointed day, and the terms of the trust instrument authorise or require the trustees to apply any part of the capital or income of the trust property for the purposes of any hospital to which the Act applies, the trust instrument is to be construed as authorising or requiring the trustees to apply the trust property for the purpose of making payments, in the case of a teaching hospital, to its board of governors, and in the case of all other hospitals to the regional hospital board or hospital management committee, as may be applicable; and any sums so paid are to be applied, so far as practicable, for the purposes specified in the trust instrument.

Harman, J., considered that this section was inapplicable, even with the assistance of s. 79 (1) which provides that, unless the context otherwise requires, " property " is to include " rights "; the context, in his judgment, required that the word " property " there used should not include rights, inasmuch as what was being dealt with by the section was something to be applied for the benefit of the board administering the hospital, and the rights vested in the board could not be applied by somebody else (i.e., the testatrix's trustee) for their benefit. But this conclusion rested on the further finding that the old board of governors of the Cancer Hospital had been dissolved by s. 78 (1) (*c*) of the Act, which provides for the dissolution of the governing bodies of voluntary hospitals transferred to the Minister by virtue of the Act " whose functions wholly cease in consequence of this Act." The effect of the words last quoted was not examined in any judgment in this case, but Evershed, M.R., after considering various other provisions of the Act, held that the old chartered corporation, which was the hospital in this case before the appointed day, had not been wholly dissolved by the Act. This conclusion rested, apparently, largely on s. 77 (1), which provides for the amendment or

repeal by order of the Minister of, *inter alia*, any charter containing provisions appearing to the Minister to be inconsistent with any of the provisions of the Act, and on the fact that the Minister had not repealed the old royal charter of the Cancer Hospital: the charter not having been repealed, the old chartered corporation must be taken as still existing. But there are other provisions of the Act (e.g., Pt. IV of Sched. III) which at the least suggest that the new governing bodies constituted by virtue of the Act to take over the functions of the old governing bodies of hospitals transferred to the Minister by the Act are created as new corporations, provisions for which the necessity is far from clear if the view that the Act by itself has not dissolved the old corporate identity of the affected bodies is the correct view: no light is cast on the relation of these provisions to s. 77.

However, this is the assumption on which the Court of Appeal proceeded, and on this footing, in the judgment of Evershed, M.R., either the property or the rights belonging to the old corporation remained in the old corporation but were dealt with by virtue of s. 59 of the Act, or s. 60 had the effect of transferring from the corporation to the newly created board of governors the rights which the testatrix had left to the hospital; in either case the property or rights being given to the corporation *prima facie* remained in the corporation. Section 60 dealt with "property held on trust," and in this case the property was the assets held by the trustee subject to the trusts on behalf of, amongst others, the existing chartered corporation of the Cancer Hospital. The effect of s. 60 on this trust was to require the testatrix's trustee, on completion of administration, no longer to pay an appropriate share to the old chartered corporation, but to apply it instead to the like extent for the purpose of making payments to the board of governors "of the teaching hospital now known as the Royal Cancer Hospital."

It will be noted that s. 60 only applies to property held on certain trusts on the appointed day: it has no application to a gift made after the appointed day. Such gifts are dealt with by s. 59, which provides that "a regional hospital board and the board of governors of any teaching hospital and a hospital management committee shall have power to accept, hold and administer any property upon trust for purposes relating to hospital services or to the functions of the board or committee under Pt. II of this Act with regard to research." This provision, to which I will refer again next week, clearly covers the destination of any gift, testamentary or *inter vivos*, made to a named hospital after the appointed day, and potential donors may with confidence be assured accordingly.

"A B C"

Landlord and Tenant Notebook

POSSESSION BY WIFE

PERHAPS the chief practical value of *Old Gate Estates, Ltd.* v. *Alexander* (1949), 93 SOL. J. 726 (C.A.), lies in the light it throws on the *ratio decidendi* of *Brown* v. *Draper* [1944] K.B. 309 (C.A.). (For evidence that there was some doubt on that subject, see 91 SOL. J. 557.)

In the older case, proceedings for possession were brought against the wife of a tenant of premises within the Increase of Rent, etc., Restrictions Acts in the following circumstances. The tenant husband left the house in consequence of matrimonial trouble, but did not purport to revoke any permission that the wife could continue to live there, and did not remove his furniture; she then commenced divorce proceedings and on the occasion of an application for alimony he said his wife and son were in the house, had the use of the furniture, and he was paying the rent. Then, the plaintiff gave him notice to quit, on the expiration of which he ceased paying rent. He was not made a party to the action for possession, but the plaintiff called him as a witness and he deposed that he had no further claim on the house but that he was willing for the defendant to have the use of the house if she would look after the furniture. At first instance judgment was given for possession on the ground that the Acts did not protect a statutory tenant's family. The Court of Appeal reversed this judgment because the statutory tenant had not given up possession, nor had any condition under which a court is entitled to make an order for the possession of a house occupied by a protected tenant been fulfilled. He had not given up possession because his wife and his furniture were still there and it was not possible validly to contract to give up possession; still less to give up the right to possession by merely saying that he had no further claim to the house.

In *Old Gate Estates, Ltd.* v. *Alexander* the tenant himself was the defendant, the facts being that he had left the house in consequence of matrimonial disputes; his wife remained in it, as did his furniture. So far the facts ran parallel to those of *Brown* v. *Draper*. But the husband then purported to give the plaintiffs, his landlords, a notice to quit which was, in the circumstances, too short. At their suggestion, however, he signed (*a*) a statement saying that he had given up possession, and (*b*) a revocation of his wife's authority to be in the flat. He did not hand over a key, and the second document was apparently not made until the plaintiffs had learned that the wife of the tenant was still in occupation. They then issued a summons for possession and the next thing that happened was that the tenant changed his mind and returned to the flat.

The county court judge held that possession had been given up when the summons was issued and gave judgment for the plaintiffs. The Court of Appeal held, guided by *Brown* v. *Draper*, that possession had not been given up; which made it unnecessary to consider the effect of the second document.

The interpretation placed upon the older decision differs from that which some people, myself included, had considered to be the true and essential one. It was, as it were, common ground between the two schools of thought that, as regards security of tenure, the Acts operate by placing a fetter on the action of the court rather than on that of the landlord (as Bankes, L.J., put it in *Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.)), so that before any order for possession can be made either the tenant must have ceased to reside in the premises or one of the "grounds for possession" must be proved. This explains the passage from Lord Greene, M.R.'s judgment in *Brown* v. *Draper*: "We do not see on what ground it can be said that a tenant who remains in possession can, by a mere statement in the witness box that he 'laid no further claim to it' confer on the court a jurisdiction of which the statute deprives it." Presumably the plaintiffs in the recent case had been made aware of this passage when they obtained the signatures. But a little later the judgment cited says: "If he [the tenant] wishes to place himself outside the protection of the Acts without putting the landlord to the necessity of taking legal proceedings his proper course is to deliver up possession. Unless and until he does so, he is under the shelter of the Acts, whether or not he so desires. No contract and, *a fortiori*, no mere statement of his wishes or intentions can deprive him of the statutory protection."

The statement by the defendant in *Old Gate Estates, Ltd.* v. *Alexander* need not have answered to the description of either a contract, a statement of wishes or a statement of intentions; nevertheless, it was held that as he had left his furniture and his wife behind in the flat, he could not be said to have delivered up possession of it. So "deliver up possession" in *Brown* v. *Draper* must now be taken to mean "give vacant possession," and a protected tenant is in a position analogous to that of those persons who enjoy diplomatic immunity and whose governments do not allow them to waive their privilege even if they want to.

It is interesting to note that, according to the judgment of Bucknill, L.J., the document addressed to the landlords must have had some though not the desired effect; for the learned lord justice described the defendant as a statutory tenant at the date of the summons, which implies that the contractual tenancy had come to an end.

All three learned lords justices agreed that the mere fact that the furniture was left was sufficient to negative the delivery up of possession; but two had something to say, *obiter*, about the circumstance that a sentient being also remained. The matter is, of course, of considerable importance both to landlords and to tenants.

Bucknill, L.J.'s view was that it was doubtful whether, unless the tenant's wife was in the wrong and had forced her husband to leave, he could lawfully and effectively revoke permission to live in the flat. If this is correct, it will mean that landlords of properties within the Acts may, like landlords of licensed premises, be pardoned if before granting tenancies they seek an interview with the wife of the applicant. Denning, L.J., considered that the wife of the tenant had, in effect, a status of her own—the learned lord justice used the expression "the matrimonial home" which, though it figures frequently in divorce petitions, has rarely called for interpretation—that she was no mere sub-tenant or licensee, and that the husband was not entitled to tell her to leave without providing a proper place to which she could go. (In *Brown* v. *Draper* the judgment at one point described the defendant as "a mere licensee.")

Of course, Denning, L.J.'s judgment does not imply that there could not be a relationship of landlord and tenant or licensor and licensee between husband and wife: the possible complications on determination of such were adverted to in *Bramwell* v. *Bramwell* [1942] 1 K.B. 370 (C.A.), and *Pargeter* v. *Pargeter* [1946] 1 All E.R. 750 (C.A.), which warrant the proposition that possession could be recovered only by means of a summons under the Married Women's Property Act, 1882, s. 17 (see 92 SOL. J. 109). Those authorities also show on the one hand that the relationship of landlord and tenant will not be readily inferred, on the other hand that a wife has, as Denning, L.J., said, "a special position in the matrimonial home." Such authority as exists on the meaning of "matrimonial home" concerns jurisdiction in point of geography rather than proprietary rights; but the conclusion arrived at by Henn Collins, J., in *Milligan* v. *Milligan* [1941] P. 78: "the phrase 'matrimonial home' extends, in relation to jurisdiction, to the husband's residence here in such circumstances that any husband similarly circumstanced and not estranged from his wife would set up home here," coupled with the obligation to support, does to some extent support Denning, L.J.'s view if qualified by Bucknill, L.J.'s proviso in favour of wronged husbands. In the light of which, county court judges may some day find themselves trying ancillary issues of just cause for desertion and suitability of alternative accommodation for one who is not the tenant.

A point on which both courts agreed in *Old Gate Estates, Ltd.* v. *Alexander* was that, for the purposes of the action, the state of affairs obtaining at the date of issue of plaint was what mattered. This is, of course, not always the case when premises are controlled. Protection can be lost, as was pointed out in *Brown* v. *Draper*, in two ways: by giving up possession, and by an order for recovery of possession. Naturally, it is essential in either case to prove that the tenancy has determined, but in the one the vital allegation is that the defendant is not a statutory tenant because he is outside the words of s. 15 (1) of the Act of 1920: "a tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies." In the other kind of case the landlord is confronted with s. 3 (1) of the 1933 Act: "no order or judgment for the recovery of possession of any dwelling-house to which the principal Acts apply or for the ejectment of a tenant therefrom shall be made or given unless the court . . ." and then comes the reference to the well-known schedule. The definition of a house to which the Acts apply is "a house . . . *let* as a separate dwelling" (s. 12 (2) of the 1920 Act, s. 16 (1) of that of 1933). In a "schedule" case the plaintiff must, apart from satisfying the overriding requirement of reasonableness, either prove the availability of suitable alternative accommodation or the existence of at least one of the grounds set out in the schedule. Evidence that suitable alternative accommodation is or is about to be available may come into existence between the issue of the plaint and the date of hearing, as has been demonstrated by *Kimpson* v. *Markham* [1921] 2 K.B. 157; where a ground provided for by the schedule is relied upon, the position is usually the same (see the judgment of MacKinnon, L.J., in *Benninga (Mitcham), Ltd.* v. *Bijstra* [1946] K.B. 58 (C.A.): house required for employee, contract of service may be made after issue of plaint: cf., on "reasonably required," *Nevile* v. *Hardy* [1921] 1 Ch. 404), though this is not so when, say, non-payment of rent is the ground put forward (*Bird* v. *Hildage* [1948] K.B. 91 (C.A.).)

R. B.

Notes from the County Courts

CONTRACTUAL FORCE OF A RENT BOOK

IN *Shreeve* v. *Hallam* (Derby and Long Eaton County Court, 23rd November, 1949), the plaintiff claimed possession of a controlled dwelling-house on the ground of a breach by the defendant of the obligations of his tenancy. The facts are set out in the reserved judgment of His Honour Judge R. A. Willes.

"Before 1941 Mr. Shreeve, the plaintiff, was the freehold owner of a controlled shop-dwelling-house, No. 8 Park Street, Derby. He was, I think, a retired business man. He went to live with his wife at Nottingham. He left the letting and management of these premises to Messrs. Innes, who are well-known estate agents in Derby. On 23rd May, 1941, Mr. Hallam, the defendant, sent to Mr. Innes the following written offer to become tenant of the property:—

51 Park Street, Derby.
23rd May, 1941.

Mr. Frank Innes,
24 Strand, Derby.

Dear Sir,

re 8 Park Street, Derby.

I hereby offer to rent the above property from 2nd June, 1941, for a term of six months certain, at the rental of £1 10s. per fortnight, exclusive of rates and water charges, payable fortnightly in advance.

I am employed as a winder at the British Celanese, Spondon, my weekly wage being approximately £4 15s.

The sole occupants of the house would consist of my wife, self, adult son and daughter.

I should like to place on record that there are several sash cords and window panes need replacing.

If accepted as tenant, I undertake to keep the interior of the property in good, clean and tenantable condition and to pay the rent promptly each week in advance.

Yours faithfully,
(Sgd.) STEPHEN E. HALLAM.

"This offer was accepted by Messrs. Innes in a letter in reply, dated 24th May, 1941:—

Mr. S. E. Hallam, 24th May, 1941.
51 Park Street,
Derby.

re 8 Park Street, Derby.

I thank you for your offer of the 23rd instant to rent the above premises from 2nd June, 1941.

As agent for and on behalf of the landlord, I hereby accept you as tenant on the terms contained therein.

Yours faithfully,
(Sgd.) FRANK INNES.

"Hallam and his family went to live in the house. They did not use or occupy the shop portion of the demised premises, for the whole of which they agreed to pay and did pay a fortnightly rent of 30s. Shortly after Mr. Hallam's occupation had started, he was supplied by Messrs. Innes with a printed rent book

containing printed conditions of tenancy, amongst which was one in these terms :—

'Paragraph 9

The tenant shall not sub-let the premises or any part thereof, nor use the same as a sale shop or workshop, without the knowledge and consent, in writing, of the landlord or agent, nor display any advertisements thereon.'

"After living in the dwelling-house for some time with the shop portion unused and unoccupied, Hallam found that the property was rated on the basis of its assessment as shop property, and in order to make use of the shop which he did not require to occupy as part of his dwelling-house and which was therefore unused, he decided to sub-let it and did sub-let it as a lock-up shop to a sub-tenant who carried on a boot repairer's business and whose name as the business occupier was painted over the shop."

The judgment deals shortly with the main question in issue :—

" In view of the letters above set out and of the decision in *Maley* v. *Fearn* [1946] 2 All E.R. 583, I feel bound to hold that a sub-letting of the shop or a use of the shop for trade purposes without the knowledge or assent of the landlord or his agent would constitute a breach by the tenant, Mr. Hallam, of the express terms and conditions of his tenancy."

The learned judge went on to hold that there had been no waiver of the breach, which had, as he found, continued undiscovered by the landlord until July, 1949, and that it was reasonable to make an order for possession.

This decision appears to interpret *Maley* v. *Fearn* as authority for the proposition that conditions printed in a rent book are *necessarily* imported into the terms of a tenancy notwithstanding that the rent book comes into existence after the tenancy has begun. The defendant in *Maley* v. *Fearn* claimed to be entitled to retain possession under s. 15 (3) of the Rent and Mortgage Interest (Restrictions) Act, 1920, which provides that :—

" Where the interest of a tenant of a dwelling-house to which this Act applies is determined either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let shall, subject to the provisions of this Act be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued."

" The question before us," said Morton, L.J., at p. 584, " is whether the premises had been lawfully sub-let to the tenant within the meaning of that subsection. As I read the judge's judgment, he regarded it as being a condition of the letting to Mrs. Bedggood "—the original tenant, who was not before the court—" that, as he put it, there should be no sub-letting without consent ; and I think there was evidence upon which the judge could properly arrive at that conclusion. The rent book which was produced starts only on 23rd April, 1945, but, according to the evidence, Mrs. Bedggood had been tenant for some years before that date, and I think it was open to the judge to infer, and I myself, I think, should have inferred, that the terms of the tenancy set out in that rent book were in fact the same terms as those to which the tenant agreed when she originally took the premises. They are put very prominently opposite the page upon which the rent is entered and the receipt column is signed, and the term in question, which I read as a condition, is the very first term that appears. The printed portion of the book begins :

' Terms of tenancy.—All tenants are held to understand and abide by the following rules : (1) The tenant must not sub-let or let apartments without the written consent of the owner or agent . . . '

If this term had not formed part of the original terms of the letting, I think that Mrs. Bedggood would have objected to its presence in her rent book."

To say that printed terms of tenancy in a rent book, which commences at a later date than the tenancy itself, are evidence justifying the inference that these were the oral terms of tenancy originally agreed, seems, with respect, very different from saying that the terms in such a rent book must be taken to vary a complete and binding tenancy agreement already concluded by correspondence.

Looking at the present case from the point of view that the terms were to be collected from the correspondence alone, an interesting question would arise as to the effect of the tenant's statement in the letter in which he offered to take a tenancy, that " The sole occupants of the house would consist of my wife, self, adult son and daughter." It is said, in Foa on Landlord and Tenant (7th ed., p. 109) : " Any words in a lease which show an agreement to do a thing make a covenant. The use of the word is not restricted to demises under seal. No special form is necessary." *Prima facie*, therefore, this looks like a covenant, not only against sub-letting, but to permit no one other than the persons named to occupy the house. But what is meant by " the house " ? The premises comprising in fact a shop and dwelling-house, it seems at least arguable that when a layman speaks of " the house " he means the dwelling-house, more especially when the phrase appears but once in contrast with other references in the same letter to " the property."

N. C. B.

HERE AND THERE

AMOUNT OF DAMAGES

MICHAELMAS Term is drawing to a close but the past two months in retrospect seem to have produced more of professional interest in the way of the mists and/or mellow fruitfulness of Parliamentary Bills ripening for harvest. These (let's try another metaphor) represent high strategy. The actual field operations in the main theatre of war, the Strand, have been unsensational. True there was an enticement action, an unusual class of encounter, which opened with a sharp cannonade, but the opposing forces retired early to their positions and broke off the engagement. In the sphere of mechanised warfare and road accident claims the motorised divisions suffered a severe check in the matter of *Arrigo* v. *Hales and Vine*. The sum of £16,450 awarded as damages by the Lord Chief Justice touches a new high level in this class of case. The tendency has been distinctly upward of late. In February last year a Darlington woman beat all previous records by recovering £15,000. In June a judgment at the Essex Assizes sent the record rocketing to £24,000 but the Court of Appeal discounted the figure by £10,000. On the whole, legal advisers are finding it far harder than before the war to formulate a fairly accurate prediction of probable damages. Judicial idiosyncrasies we had and have always with us, but the considerations bearing on the value of money have grown varied and complicated beyond the possibilities of actuarial calculation —wage rates, price levels, taxation incidence, devaluation. The judges themselves have good enough reason for nostalgic reflections on just how much a pre-war (indeed, in their case a pre-Crimean War) £5,000 is worth in 1949 in terms of the good life attainable thereby. Still, all factors weighed, this latest award is remarkable. Loss of expectation of life has so far fetched nothing like it.

NEW LOOK FOR J.P.'s

ROUND the river bend at Westminster Mr. Chuter Ede, moving the Second Reading of the Justices of the Peace Bill in the Commons, adds (or hopes he adds) a new chapter to an old story, in fact a story older than the Canterbury Tales, for Edward III thought of J.P.'s before Chaucer took the pilgrim's road from Southwark. Six hundred years is a respectable age for any institution to take a sip of the elixir of life and make a fresh start. But will the infant Bill grow into a fine, sturdy Act of Parliament ? That is by no means sure. The Magistrates' Association have been told that it may be " lost through a spate of talk " in Parliament. In the Lords it all but foundered through the lateness of the Parliamentary programme and now Mr. Ede has asked the Commons to make it possible for the Bill to reach the Statute Book before the Session ends. Although the measure stands apart from and above the organised party warfare of the big battalions, there has been plenty of small scale guerilla fighting on its passage. Not everyone has so lost faith in the physical and mental faculties of grandparents as to approve a rigid seventy-five year age limit. Opposition to the cessation of *ex officio* appointments to the magistrates' bench of members of local authorities has resulted in a compromise. What the Bill would do as regards the prospects of assistants to justices' clerks is far from winning unanimous approval and has given rise to the most pessimistic prognostications of either a total drying up of the stream of personnel or, at the very least, a crisis in which clerks and assistants alike would be in very short supply—a situation which conjures up alarming visions of resort to a high-priced transfer system or a dark traffic in clerks " under the Bench."

THE DOOMED RECORDERS

WHAT has seemed to affront local patriotism more than anything else has been the proposal to abolish thirty-two of the fifty-six recorderships in the non-county boroughs. The original proposal to confiscate the commissions of small boroughs with populations of under 50,000 roused so much of the spirit of the Napoleon of Notting Hill that it was agreed to preserve the recorderships of those with populations between 20,000 and 50,000. Even this has not given full satisfaction to the champions of the little places and there have been suggestions made for the establishment of combined recorderships, with special reference to Devizes and Andover. Indeed, there is something curiously mechanistic in the implied assumption that a miniature must in the nature of things be less valuable than a mural. If only as an inexpensive training ground for future judges the little recorders' courts might make a case for themselves even on utilitarian grounds. In most cases railway fares and hotel expenses leave the holder of the office little to enjoy but his dignity and a sense of duty done, for there is not much pocket-money over from a salary of £40 or £50 a year—less, as Mr. John Maude, K.C., pointed out, than the cost of painting the town hall. Even the railway fare is not an expense deductible for the purposes of income tax. Stationery actually used and an estimated sum for wear and tear of robes and trousers is the limit of the generosity of the Commissioners of Inland Revenue. In a country which does not follow the Continental system of a judiciary trained separately and apart from the rest of the legal profession, recorderships, in our haphazard and empirical way, seem to provide a satisfactorily economical form of training. In the course of the debate in the Commons the ghosts of the Attorney-General's sugar loaves made a brief and tantalising appearance from the unrationed past. These are (or should be) the recognition of the Royal Borough of Kingston for his services as its recorder, services the less onerous because it has no quarter sessions at which he can preside. It seems that the traditional emoluments had been tendered to him but prudently declined lest, in another capacity, he might be obliged to consider whether the transaction amounted to an offence under Ministry of Food regulations. Mr. Ede assured the House that Kingston would not lose its recorder; in happier times it may even be allowed to reward him. So point follows point on the Bill and meanwhile it is reported that over 1,700 magistrates have taken a three-guinea correspondence course on how to be a magistrate in twenty-five easy lessons.

RICHARD ROE.

NOTES OF CASES

HOUSE OF LORDS

DESERTION (SCOTLAND): REFUSAL OF MARITAL INTERCOURSE

Lennie *v.* Lennie

Viscount Jowitt, L.C., Lord Merriman, Lord Simonds, Lord Normand and Lord Reid. 1st December, 1949

Appeal from the Second Division of the Court of Session.

The appellant instituted proceedings against her husband for desertion. She was unsuccessful in the Scottish courts, and now appealed. The House took time for consideration.

LORD NORMAND, with whom the other noble lords agreed, said that it had already been decided that the Divorce (Scotland) Act, 1938, although it reduced the period of desertion necessary to found a right to divorce, did not qualify or modify the conception of desertion built up by judicial interpretation of the statute of 1573, which first introduced divorce for desertion into the law of Scotland. The wife submitted that mere refusal of intercourse had been finally accepted as a ground of divorce before 1938. The issue, which had never till now been brought before the House, was not discussed in the courts below, because both the Lord Ordinary and the judges of the Second Division treated it as determined in favour of the wife by *Goold* v. *Goold* [1927] S.C. 177. The judgments below were therefore concerned with other issues, of competency and sufficiency of evidence and of acquiescence. On those issues the Lord Ordinary had decided against the wife, and a majority of the Second Division (the Lord Justice-Clerk dissenting) affirmed his decision; but none of those issues arose unless it were established that the refusal of sexual intercourse was *per se* desertion according to the Scottish law of divorce. The question must be decided in accordance with the principles and precedents of Scots law. The House must be satisfied that the principle of statutory construction, common to both the law of England and the law of Scotland, and applied in *Weatherley* v. *Weatherley* [1947] A.C. 628; 90 SOL. J. 296, was not applicable to the present case. In *Weatherley* v. *Weatherley*, *supra*, it was held that the Legislature must have intended the word "desertion" in the Matrimonial Causes Act, 1937, to bear a meaning consistent with the law expounded by the most recent judicial decision. So, here, it might be said that the Legislature intended the word "desertion" in the Divorce (Scotland) Act, 1938, to bear the meaning put on it in *Goold* v. *Goold*, *supra*. To that there was a complete answer: the Matrimonial Causes Act, 1937, for the first time made desertion a ground of divorce, and it necessarily involved a definite conception of desertion, which it did not itself define. The conception of desertion could only be found in the jurisprudence as it existed at the date of the Act, and it could only be definite if the latest decided cases were treated as closing past controversies. But the Divorce (Scotland) Act, 1938, did not fix the legal meaning of desertion either by a new statutory definition or by reference to existing decisions. It was not, indeed, concerned with the legal content of the conception of desertion, and it employed the word only as a descriptive term of common usage. The Act was therefore no hindrance to the overruling of decisions on what constituted desertion which, on later and fuller consideration, appeared to be erroneous. He would therefore overrule *Goold* v. *Goold*, *supra*, and *A* v. *B* (1905), 13 S.L.T. 532, disapprove of the reasoning of Lord Fraser in *Forbes* v. *Forbes* (1881), 19 S.L.R. 118, and dismiss the appeal. Appeal dismissed.

APPEARANCES: *Graham Guest*, K.C., and *J. J. Cunningham*, K.C. (Scottish Bar) (*Booth & Blackwell*, for *Montgomerie, Flemings, Fyfe, MacLean & Co.*, Glasgow, and *Laing & Motherwell*, Edinburgh).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

DISCOVERY BEFORE STATEMENT OF CLAIM

Speyside Estate & Trust Co., Ltd. *v.* Wraymond Freeman (Blenders), Ltd.

Wynn Parry, J. 1st November, 1949

Procedure summons.

The summons was taken out by the plaintiffs asking for discovery of documents in the following circumstances. In December, 1947, a large stock of bottled whisky was warehoused in the name of the plaintiffs, but under the control of the defendants, who were entrusted with documents of title for the purpose of selling the whisky. Before 19th January, 1948, the whole of the stock was sold for £15,619, which the defendants paid into their own banking account so that it became mixed with their own moneys. The defendants paid various sums to the plaintiffs, and in March, 1948, the amount owing to the plaintiffs for the whisky was £9,269. In March, 1948, the defendants by one of their employees, W, withdrew from the account £15,510 in £5 notes. W having absconded with the money was later arrested, prosecuted and convicted. In November, 1948, the police recovered £10,800 of the original £5 notes, and they were handed over to the liquidator of the defendant company which was in voluntary liquidation. The plaintiffs then brought this action for a declaration that they were beneficially entitled to a charge of £9,269 on the notes in priority to the defendants' interests. They now asked, before any statement of claim had been delivered, for a disclosure of the defendants' bank pass sheets from 24th December, 1947, to 27th March, 1948, inclusive. The case turned on Ord. XXXI, rr. 12 and 14.

WYNN PARRY, J., said there was jurisdiction in the court to make the order asked for (*Gale* v. *Denman Picture Houses, Ltd.* [1930] 1 K.B. 588). The Court of Appeal there decided that the court had jurisdiction to order discovery at any stage, but it ought to be used very sparingly. It was not the practice to make an order for discovery before delivery of statement of claim save in the most exceptional circumstances, and in the above case the order was refused. The only question here was whether the circumstances were so exceptional as to warrant a departure from the settled practice. This was an action to trace moneys into and out of a banking account, and a statement of claim settled without the information contained in the bank pass sheets after the defendants had received the proceeds of sale of the whisky would almost certainly require substantial

amendment. Only the defendant company knew what dealings had taken place with that money. The action was peculiar and unusual, and he (his lordship) was constrained to the opinion that the present was one of those exceptional cases where the plaintiffs' application for discovery ought to be allowed and an order would be made to that effect.

APPEARANCES: *J. L. Arnold* (*Wigan & Co.*); *J. V. Nesbitt* (*Judge & Priestley*).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

LUNACY: DEVOLUTION OF REAL ESTATE

***In re* Bradshaw; Bradshaw *v.* Bradshaw**

Danckwerts, J. 3rd November, 1949

Adjourned summons.

By the will of W.B., who died in 1855, real estate was devised to his son T.B. for his life in trust for the children of T.B. who should attain twenty-one, or being females, marry. T.B. died in 1906 leaving five children of whom C.M.B. a daughter was one. In 1912 she became of unsound mind, a receiver of her estate was appointed in 1936, and she died in 1948 intestate and unmarried. Letters of administration to her estate were granted to the plaintiff A.E.B. and the defendant H.R.B., the latter being also her heir-at-law. The question raised was whether C.M.B.'s share of the real estate devised by the will of W.B. which remained unsold, passed as realty or personalty. *Cur. adv. vult.*

DANCKWERTS, J., said that on 31st December, 1925, the intestate was entitled to an undivided share in real estate, which at her death would have passed to her heir-at-law. But the 1925 legislation converted that to an interest in the proceeds of sale of the property, though for some purposes it could still be regarded as real estate (*In re Mellish* [1929] 2 K.B. 82, and *In re Kempthorne* [1930] 1 Ch. 308). By s. 51 (2) of the Administration of Estates Act, 1925, real estate to which a lunatic or defective of full age was entitled at the commencement of the Act was, owing to his inability to make a will, to devolve on his death in accordance with the law in force before the commencement of the Act. The section had been considered in *In re Donkin* [1948] Ch. 74, where a similar question arose in connection with a trust for sale created by s. 33 of the Administration of Estates Act, 1925. Roxburgh, J., held in that case that the meaning of the phrase "beneficial interest in real estate" in s. 51 (2) must be confined to those interests which would have devolved in accordance with the law relating to freehold land. He would follow that decision and hold that the intestate's interest at the date of her death was not a beneficial interest in real estate within s. 51 (2) of the Administration of Estates Act, 1925, but was converted into personalty and passed to her next of kin, although he thought that that interpretation of the subsection defeated what was its probable intention.

APPEARANCES: *N. S. S. Warren, A. H. Droop*; *N. K. Wigan* (*Blyth, Dutton, Wright & Bennett*, for all parties).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

EXECUTION AGAINST COMPANY IN LIQUIDATION

***In re* Grosvenor Metal Co., Ltd.**

Vaisey, J. 8th November, 1949

Adjourned summons.

The above company was in liquidation. Before the commencement of the winding up a creditor had obtained judgment against the company for £458, and proposed to issue execution on the goods and land of the company. Pressure was brought to bear on the creditor not to proceed immediately to execution, and it was not carried out. The summons asked for an order under s. 325 of the Companies Act, 1948, to allow the debt to be paid out of the proceeds of sale of the goods of the company, in priority to other creditors. Section 325 (1) provides that an execution creditor who has not completed the execution before the company is wound up cannot retain the benefit of the execution against the liquidator, but that the rights conferred by that section on the liquidator may be set aside by the court in favour of the creditor to such an extent and on such terms as the court may think fit.

VAISEY, J., said the case raised no new question of principle, and the only point was whether s. 325 (1) had made any alteration in the law. The high-water mark of the authorities on the subject was *Armorduct Manufacturing Co., Ltd.* v. *General Incandescent Co., Ltd.* [1911] 1 K.B. 143, where it was held, following other cases, that nothing short of trickery, fraud, or force would justify the court in exercising the discretion to allow the execution to be completed against the liquidator, and it was argued that the subsection had not altered the law. But he held that the subsection had conferred on the court a much wider discretion than existed before the Act of 1948 came into operation, and that trickery need not be proved. Without going into the facts of the case he acquitted the officers of the company of any dishonesty and would make a declaration in favour of the creditor.

APPEARANCES: *David Weitzman* (*Gilbert, Clarke & Gilbert*); *M. Gravenor Hewins* (*Linklaters & Paines*).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

PURCHASE TAX: "WHOLESALE VALUE"

Attorney-General *v.* A. W. Gamage, Ltd.

Cassels, J. 18th October, 1949

Action.

The defendant company manufactured branded water-softeners which they passed to their retail department. They were assessed to purchase tax on the wholesale value of the articles. As there was no open market in water-softeners in the United Kingdom, the "wholesale value" was computed by the Commissioners of Customs and Excise by adding 15 per cent. to the cost of manufacture. The company contended that the cost of manufacture alone should have been taken as the wholesale value, and paid purchase tax on that footing. The Attorney-General claimed £67 10s. as the balance alleged to be still due. By s. 21 (1) of the Finance (No. 2) Act, 1940, the "wholesale value" of goods on which purchase tax is payable is to be "taken to be the price which in the opinion of the Commissioners the goods would fetch, on a sale made at the time when the tax in respect of the goods becomes due, by a person selling by wholesale in the open market in the United Kingdom to a retail trader carrying on business in the United Kingdom only. . . ."

CASSELS, J., said that the Commissioners were bound by s. 21 of the Act of 1940 to form an opinion as to the wholesale value of the water-softeners. Since there was no open market, they had to arrive at an opinion as best they could. They did that, and, as there was no allegation of bad faith, it was not competent for the court to question their decision. The company's remedy, if any, would have been by a reference of the dispute to arbitration under s. 21 (2). He was satisfied that the Commissioners had formed the opinion that the wholesale value of the water-softeners was their cost to the defendants, plus 15 per cent. Judgment for the plaintiff.

APPEARANCES: *H. L. Parker* (*Solicitor for Customs and Excise*); *G. R. F. Morris* and *Duncan Wallis* (*Mawby, Barrie & Letts*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

EXCESS PROFITS TAX: IRISH TAXES PAID BY IRISH COMPANY WITH ENGLISH BRANCHES

Inland Revenue Commissioners *v.* Dowdall O'Mahoney and Co., Ltd.

Croom-Johnson, J. 25th October, 1949

Case stated by the Income Tax Special Commissioners.

The respondent company were margarine manufacturers and butter merchants carrying on business in Eire and having branches in England at which a general grocery business was conducted. They were liable for excess profits tax in respect of the business carried on at those branches under s. 12 of the Finance (No. 2) Act, 1939. The company had paid three Irish taxes—income tax, excess profits tax and corporation profits tax—on the whole of their profits, including those of the English branches. They claimed to be entitled, for the purposes of computation of excess profits tax in England, to apportion against those branches as a trading expense "wholly and exclusively laid out . . . for the purposes of" their trade (Income Tax Act, 1918, Sched. D, Cases I and II rules, r. 3), part of the sum paid in Irish taxes. The Special Commissioners held the deduction permissible, and the Crown now appealed.

CROOM-JOHNSON, J., said that the Special Commissioners appeared to have taken the right course of considering what the Irish taxes which the company had paid had to do with the English branches, which were admittedly chargeable with English excess profits tax. The Commissioners had not laid down as a general rule that the Irish taxes in such a case were deductible: they found that it was a necessary expense for the company, in carrying on their business at the English branches, to pay the Irish taxes, so that a part of the sums so paid was apportionable as an expense of those branches. The Commissioners had not, however, stated in the case what part of the stock-in-trade at the

English grocery branches consisted of margarine and butter from Ireland. There was no indication in the case on what the Commissioners had based their finding that the Irish taxes were paid for the purposes of the English business. In *Stevens* v. *Durban-Roodeport Gold Mining Co.* (1909), 5 Tax Cas. 402, as was not the case here, there was evidence that the assessee company would not be allowed to carry on business without paying the tax in question there. The case must go back to the Commissioners to state why they found that payment of the Irish taxes was an expense necessarily incurred for the purposes of the company's English business. Appeal allowed.

APPEARANCES: *King*, K.C., and *Hills* (*Solicitor of Inland Revenue*); *Grant*, K.C., and *Senter* (*Last, Sons & Fitton*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time :—

Charity of Walter Stanley in West Bromwich Bill [H.C.] [29th November.

Distribution of German Enemy Property Bill [H.C.] [29th November.

Electoral Registers Bill [H.C.] [30th November.

Festival of Britain (Supplementary Provisions) Bill [H.C.] [30th November.

Read Second Time :—

Public Works Loans Bill [H.C.] [1st December.

War Damaged Sites Bill [H.C.] [29th November.

Read Third Time :—

Air Corporations Bill [H.L.] [1st December.

Coal Industry (No. 2) Bill [H.C.] [1st December.

Election Commissioners Bill [H.L.] [1st December.

Fife County Council Order Confirmation Bill [H.C.] [1st December.

National Health Service (Amendment) Bill [H.C.] [1st December.

Shoreham Harbour Bill [H.C.] [1st December.

Telegraph Bill [H.C.] [1st December.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

India (Consequential Provision) Bill [H.C.] [30th November.

To make provision as to the operation of the law in relation to India, and persons and things in any way belonging to or connected with India, in view of India's becoming a Republic while remaining a member of the Commonwealth.

Read Second Time :—

Justices of the Peace Bill [H.L.] [28th November.

Read Third Time :—

British North America (No. 2) Bill [H.L.] [2nd December.

Criminal Justice (Scotland) Bill [H.L.] [30th November.

Married Women (Restraint upon Anticipation) Bill [H.L.] [29th November.

Nurses (Scotland) Bill [H.L.] [30th November.

In Committee :—

Armed Forces (Housing Loans) Bill [H.C.] [2nd December.

B. DEBATES

In the Committee Stage of the **War Damaged Sites Bill** Mr. WALKER-SMITH moved an amendment to cl. 1, designed to compel local authorities to have resort to negotiation before taking possession temporarily by compulsory means. He cited, in support, s. 43 of the Town and Country Planning Act, 1947, which provides for compulsory acquisition only where the Minister is satisfied that the Central Land Board is unable to acquire land " by agreement on reasonable terms." Mr. BEVAN opposed the amendment. How was the local authority to obtain permission of an owner who could not be found ? Often there were several owners interested in a site and the authority would be delayed by having to search out each one of them. The Bill followed the procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946, which enabled a local authority, where land was urgently required for housing purposes, and the owner could not be found, to put up a notice on the site. The amendment did not say how long was to be spent in parleying. They would seek to obtain the owner's consent by administrative action, where he could readily be found, and the Minister's consent was required before compulsory possession of the site could be taken. On a division the amendment was defeated.

Next, an amendment to cl. 3 was proposed by Commander GALBRAITH designed to require the Minister to hear objections before authorising compulsory taking of possession. All that was desired was to apply, with minor modifications, the procedure of the 1946 Act to those transactions. Justice would thus be more manifestly done than if the Minister merely considered written objections. The Parliamentary Secretary to the Ministry of Health, Mr. BLENKINSOP, objected that this meant applying all the panoply of compulsory acquisition in a measure which contemplated only possession for five or ten years. Some of these sites were a nuisance and a danger and some speedy machinery was needed to enable local authorities to deal with them. Lieut.-Commander BRAITHWAITE thought that later Governments might decide on prolongation of this temporary possession. Mr. WALKER-SMITH said that the concept " I will hear the other side " was as old as British justice and ought not to be lightly jettisoned by the House of Commons. If there was any delay under the 1946 Act procedure it was largely the Minister's delay. Under the present Bill an objector would get only a notification of the Minister's decision, he would not even get the reasons. Mr. BEVAN said that where the Minister was satisfied that the objection was a solid one he could hold an inquiry, but to insist on a hearing every time seemed to be unnecessary. This amendment was also defeated on a division.

Mr. HARE moved an amendment to cl. 3 that the Minister should postpone the authorisation of compulsory taking of possession to enable an owner, who was willing to restore the site, to obtain the necessary licences. Colonel DOWER said that further delay was caused by the present inability of the War Damage Commission, owing to pressure of work, to give prior approval to war-damage claims. Mr. BEVAN thought there was here no conflict of interest between the owner and the local authority. The latter was not going to jump the former's claim in order to spend the ratepayers' money. If the Minister were satisfied that there was a good chance of getting the licence, he would not authorise the compulsory measures. In fact cl. 7 (Determination of possession for purposes of development by owner) had provided for the authority's giving up the site when the owner was ready to proceed. It was only necessary to put protective words into a statute if it could be shown that the normal operation of the self-interest of the parties made it necessary to do so. The amendment was negatived without a division. [18th November.

When the **Married Women (Restraint upon Anticipation) Bill** was considered in Committee, Sir HUGH LUCAS-TOOTH moved a new clause to enable the trustees or the married woman whose restraint was lifted by the Bill to apply to the court within six months from the passing of the Act for an order that the income be henceforth held on protective trusts, on the grounds that the removal of the restraint was detrimental to the interests of the married woman, or likely to be so, and that the court considered it just and equitable so to order. The form of protection sought to be given was that provided under s. 33 of the Trustee Act. The protection would not be permanent, but only for the duration of the marriage. He cited as an example of a case in which such protection was required that of a married woman who had been persuaded by her husband to guarantee his overdraft at the bank. The husband had gone bankrupt, and if the Bill passed in its present form, the whole of the income of £2 to £3 a week would immediately become assets for the payment of her husband's debts, her life interest would be sold and nothing would be left for her and her child to live on.

Sir HARTLEY SHAWCROSS said the Government had recognised the existence of this problem and had taken the best Chancery advice open to them in the matter, but, after careful consideration, had determined to oppose the new clause, which sought to impose on married women restrictions even more onerous than those of which the Bill sought to relieve her. He was satisfied that settlors would not have imposed these protective trusts. The restraint was aimed against the husband only and was not and never had been recognised as a device to protect married women from their own or their husband's creditors. The protective trust was aimed against creditors, and inasmuch as the new clause would enable some married women to delay, defeat or cheat their creditors, the Government was opposed to it. Even if the clause were accepted and the court granted

the lady's application, the protective trust would cease as soon as her husband died, and then the creditors would be able to take the whole of the money when she needed it most.

Protective trusts were more severe than the restraint on anticipation. If the married woman subject to such trusts went bankrupt or some third party endeavoured to levy execution for some debt which she had incurred, she lost all right to the income and was left at the mercy of trustees who might be indifferent or ill-disposed towards her. Furthermore, the new clause proposed to vest a new discretion in the Chancery judges without giving them a single clue as to how that discretion was to be exercised, and there were no cases more difficult to deal with or in which more bitter hostility was aroused than cases of family disputes. Sir Hugh Lucas-Tooth proposed to hand these married women over to a jurisdiction of which John Selden had said: "Equity is a roguish thing; for law we have a measure . . . One Chancellor has a long foot, another a short foot, a third an indifferent foot. 'Tis the same thing in the Chancellor's conscience."

Mr. MANNINGHAM-BULLER said the effect of the Bill in cases where a bank had taken some charge on a married woman's income, subject to restraint, was automatically to enlarge the bank's security. He felt sympathy with such a woman who found that the Bill gave the bank much more than it thought it would get when it took the security. In such a case, surely, she would have no difficulty in convincing the court that she should have some protection. The court would have no difficulty in distinguishing between cases in which it was and was not just and equitable to provide protection. This was not a case of defeating or defrauding creditors but of preventing them obtaining a much enlarged security.

Mr. GAGE thought there was little force in the argument that Chancery judges would dislike this jurisdiction. They already had plenty of discretionary duties which they must dislike. Mr. STRAUSS thought the Attorney-General was wrong to quote the *dictum* of John Selden. Since his day the rules of equity had become just as rigid, if not more rigid, than the rules of common law. Sir HARTLEY SHAWCROSS intervened to say that in fact this new discretion would put the judges back into that position, for they would have no precedents to guide them, but Mr. GAGE thought they would soon find examples from the practice of their courts which they thought should govern them in this instance. That Chancery judges now regarded themselves as almost more strictly bound by precedent than the common law judges was shown by *Donoghue* v. *Stevenson*, in which case it was the two Chancery judges who felt that they must dissent and follow precedent.

On a division, the new clause was defeated. The Bill was then reported, read a third time, and passed without amendment.
[29th November.

In moving the second reading of the **Justices of the Peace Bill,** the HOME SECRETARY said that the Bill came to the House of Commons in a form that had secured general agreement in another place, and represented a compromise which was regarded as satisfactory by all who had taken part in the discussions there. He hoped that it would be possible to place the Bill on the statute book before the present session ended. Even after the Bill had come into effect there would remain anomalies in our system of lay magistrates, but he was sure that the system ensured that our people, in hundreds of thousands of disputes, had their causes heard and determined by people who understood their way of life, and who gave due weight to the law, but at the same time brought to the consideration of matters a refreshing common sense which enabled their decisions to be received with general respect by those whom they served. Sir DAVID MAXWELL-FYFE approved the provisions of the Bill as they stood and hoped it would have a speedy passage into law.

Mr. WILKES thought that this extremely enlightened measure gave the system of lay justices possibly its last chance to allay the fears and doubts which had arisen occasionally about its working. From time to time a breakdown in these courts was given great publicity and helped forward the demand for an extension of the stipendiary system. He thought the ideal court consisted of a stipendiary assisted by two lay magistrates. The excellent scheme for training would be little use unless the original appointments were good. He hoped advisory committees would be given some guidance as to the need to appoint more people in the middle thirties. Whilst it was true that people in political life often made good justices, sometimes it was a defect, not a virtue, of character which brought people into the political arena, and the committees should look outside political circles for recruits. He disagreed profoundly with the provisions of the Bill as to *ex officio* justices. It was not good enough to try people out thus at other people's expense to see if they made good justices or not. He wondered if cl. 4 would enable the Lord Chancellor to place on the Supplemental List new justices who did not take advantage of the training afforded within a year or two of their appointment. He was anxious, also, about the fact that whilst Metropolitan magistrates were paid out of the Treasury, other stipendiaries were paid out of local funds. He also regretted that the du Parcq Committee's recommendation that stipendiaries should be appointed without the need for a local petition whenever the growth of population or a sudden breakdown made it seem advisable had not been adopted. A discretion might well be given the Lord Chancellor to appoint a stipendiary when there were indications that the bench in a certain area needed strengthening. He felt that the individual's liberty was more likely to be safeguarded by the common courts of this country than by any political party, however sincere it might be.
[28th November

C. QUESTIONS

The MINISTER OF FOOD stated that the total number of prosecutions for food offences during the year ended 31st October, 1949, was 9,290. [28th November.

Sir JOHN MELLOR asked whether the Minister of Fuel and Power, in view of the fact that the Crown had abandoned its appeal against the Sheriff's decision at Edinburgh, on 19th October, 1949, that the presence of diphenylamine could not be proved by analysis to be present in motor spirit, would now discontinue proceedings instituted in reliance on the definition of commercial petrol contained in S.I. 1948 No. 1127. Mr. GAITSKELL replied that he was advised that the reasons for the abandonment of the Edinburgh appeal did not apply to English cases, and the appeal in the parallel case decided at Bromley was being pursued. Since these cases were heard there had been fifty convictions under the original order and the total number of convictions under the Motor Spirit (Regulation) Act in respect of commercial petrol to date was 808. [28th November.

The ATTORNEY-GENERAL said that he regretted that he was as yet unable to say when the final report of the Leasehold Committee could be expected. [28th November.

The ATTORNEY-GENERAL gave the following list of boroughs in which it is proposed to abolish courts of quarter sessions: Banbury, Bury St. Edmunds, Chichester, Newbury, Barnstaple, Warwick, Wenlock, Andover, Carmarthen, Berwick-on-Tweed, Faversham, Stamford, Tiverton, Oswestry, Abingdon, Bideford, Lichfield, Maldon, Hythe, Devizes, Saffron Walden, Sudbury, Bridgnorth, Ludlow, Richmond (Yorkshire), Tewkesbury, Rye, Sandwich, Tenterden, Thetford, South Molton.
[28th November.

Mr. GLENVIL HALL stated that in the year ended 31st July, 1949, there were 6,800 distraints for recovery of income tax in England, Wales and Northern Ireland. Magistrates' orders for payment were also obtained in about 4,200 cases, and judgment was obtained in the High Court in about 700 cases.
[29th November.

The MINISTER OF DEFENCE stated that he was unable to take final decisions on the revision of the services' court martial procedure until the report of Mr. Justice Pilcher's Committee on the Naval system had been considered. This report was expected shortly. [30th November.

Mr. CHUTER EDE stated that he had made proposals for the establishment of a joint negotiating committee on conditions of employment of probation officers, and a draft constitution was being considered by the associations which would be represented on the committee. The committee would be constituted and would meet as soon as agreement could be reached with the associations. [1st December.

Mr. HARDY asked whether the Chancellor of the Exchequer had any statement to make on the position of corporate bodies which had hitherto been recognised by the Inland Revenue as charities and had limited themselves solely to charitable activities but which were now being told by the Inland Revenue that such recognition must be withdrawn as a result of the decision of the Court of Appeal in *Oxford Group* v. *Commissioners of Inland Revenue*. Sir STAFFORD CRIPPS replied that he was aware of these difficulties in the case of bodies which included in the objects set out in their memorandum and articles powers to establish and support or aid in the establishment and support of charitable or benevolent associations, and to subscribe or guarantee money for charitable or benevolent purposes or to do such things as the organisation might think conducive to the attainment of its objects. In the past these powers had

been regarded as merely ancillary to admittedly charitable objects and had accordingly not been called in question by the Inland Revenue. He proposed to give such bodies an opportunity to amend their constitution without being deprived of relief from income tax in respect of the intervening period, subject to the following conditions :—

(*a*) That the body concerned had hitherto been recognised by the Inland Revenue as a charity for income tax purposes.

(*b*) That its status as such was impugned by reason only of the fact that its memorandum and articles included a paragraph or paragraphs in the terms to which he had referred or in terms closely approximating to those terms ; and

(*c*) That before the end of the current income tax year 1949–50 (ending 5th April, 1950), it amended its memorandum and articles to comply with the law as now declared by the Court of Appeal.

Where these conditions were fulfilled the Inland Revenue would allow relief in advance of legislative provision which he proposed to introduce in a Finance Bill in due course.

[1st December.

STATUTORY INSTRUMENTS

British Guiana (Constitution) Amendment Order in Council, 1949. (S.I. 1949 No. 2200.)

Christmas and New Year Food Directions, 1949. (S.I. 1949 No. 2181.)

Civil Defence (Fire Services) (Scotland) Regulations, 1949. (S.I. 1949 No. 2167 (S151).)

Civil Defence (Public Protection) (Scotland) Regulations, 1949. (S.I. 1949 No. 2166 (S150).)

Control of Check Trading (Amendment) Order, 1949. (S.I. 1949 No. 2153.)

Control of Flax (Various Orders) (Revocation) Order, 1949. (S.I. 1949 No. 2194.)

Control of Growing Trees and Home-Grown Round Timber in the Log (No. 4) Order, 1949. (S.I. 1949 No. 2202.)

Control of Timber (Home-Grown Timber Prices) (Revocation) Order, 1949. (S.I. 1949 No. 2203.)

Control of Timber (No. 53) Order, 1949. (S.I. 1949 No. 2204.)

Diplomatic Privileges (Brussels Treaty Permanent Commission) (Amendment No. 2) Order in Council, 1949. (S.I. 1949 No. 2190.)

Double Taxation Relief (Taxes on Income) (Basutoland) Order, 1949. (S.I. 1949 No. 2197.)

Double Taxation Relief (Taxes on Income) (Bechuanaland Protectorate) Order, 1949. (S.I. 1949 No. 2198.)

Double Taxation Relief (Taxes on Income) (Swaziland) Order, 1949. (S.I. 1949 No. 2199.)

Electric Lighting (Restriction) General (No. 2) Licence, 1949. (S.I. 1949 No. 2217.)

Establishments (Christmas Turkeys) Order, 1949. (S.I. 1949 No. 2183.)

Faringdon Water Order, 1949. (S.I. 1949 No. 2212.)

Fats, Cheese and Tea (Rationing) (Amendment No. 7) Order, 1949. (S.I. 1949 No. 2180.)

Fire Services (Discipline) Regulations, 1949. (S.I. 1949 No. 2161.)

Fire Services (Ranks and Conditions of Service) (No. 3) Regulations, 1949. (S.I. 1949 No. 2162.)

Firemen's Pension Scheme (No. 3) Order, 1949. (S.I. 1949 No. 2160.)

Food Rationing (General Licence No. 3) Order, 1949. (S.I. 1949 No. 2182.)

Government Oil Pipe-Lines (Amendment) Regulations, 1949. (S.I. 1949 No. 2168.)

Greenwich Hospital Pensions Order, 1949 (S.I. 1949 No. 2188.)

Ground Sulphur (Prices) (Amendment No. 3) Order, 1949. (S.I. 1949 No. 2195.)

Hill Farming Improvements (Piers, etc.) Order, 1949. (S.I. 1949 No. 2169.)

Hill Farming Improvements (Settled Land) (Northern Ireland) Regulations, 1949. (S.I. 1949 No. 2170.)

House of Commons (Redistribution of Seats) (No. 4) Order, 1949. (S.I. 1949 No. 2196.)

Jamaica (Constitution) (No. 2) Order in Council, 1949. (S.I. 1949 No. 2201.)

London Traffic (Prescribed Routes) (No. 30) Regulations, 1949. (S.I. 1949 No. 2163.)

Merchant Shipping (Load Line Convention) (Israel) Order, 1949. (S.I. 1949 No. 2187.)

Metropolitan Police Staffs Superannuation Order, 1949. (S.I. 1949 No. 2193.)

Mining Timber Prices (Revocation) Order, 1949. (S.I. 1949 No. 2205.)

Naval Knights of Windsor (Travers Pensions) Order, 1949. (S.I. 1949 No. 2189.)

Navigation Order No. 48, 1949. (S.I. 1949 No. 2165.)

Non-Contributory Old Age Pensions Regulations, 1948. (S.I. 1948 No. 1504.)

Perth–Aberdeen–Inverness Trunk Road (Tynet Bridge and East of Whitegate Diversions) Order, 1949. (S.I. 1949 No. 2206.)

Public Use of the Records Rules, 1949. (S.I. 1949 No. 2211.)

Remuneration of Teachers Amending Order, No. 2, 1949. (S.I. 1949 No. 2151.)

Retention of Main under Highway (Wiltshire) (No. 14) Order, 1949. (S.I. 1949 No. 2143.)

Silk Duties (Drawback) (No. 3) Order, 1949. (S.I. 1949 No. 2185.)

Stopping up of Highways (Nottinghamshire) (No. 1) Order, 1949. (S.I. 1949 No. 2214.)

Stopping up of Highways (West Riding of Yorkshire) (No. 3) Order, 1949. (S.I. 1949 No. 2144.)

Tanganyika (Legislative Council) Amendment Order in Council, 1949. (S.I. 1949 No. 2191.)

Tanganyika Order in Council, 1949. (S.I. 1949 No. 2192.)

Utility Apparel (Maximum Prices and Charges) Order, 1949 (Amendment No. 4) Order, 1949. (Published with Related Schedules (Apparel) 7c Suppt. No. 5). (S.I. 1949 No. 2154.)

Utility Cloth and Utility Household Textiles (Maximum Prices) (Amendment No. 4) Order, 1949. (Published with Related Schedule (Cloth) 5g Suppt. No. 1.) (S.I. 1949 No. 2155.)

Utility Woven Blankets (Marking and Manufacturers' Prices) Order, 1949. (S.I. 1949 No. 2164.)

NOTES AND NEWS

Honours and Appointments

The King has appointed Sir FREDERICK WILLIAM GENTLE, K.C., to be a Commissioner of Assize on the Wales and Chester Circuit, and Mr. C. R. HAVERS, K.C., to be a Commissioner of Assize on the Oxford and Midland Circuits.

Mr. CHARLES P. CLARKE, town clerk of Beddington and Wallington, has been appointed clerk to Peterborough City Council.

Mr. R. P. CROMPTON, assistant solicitor in the town clerk's department at Scunthorpe, has been appointed deputy town clerk of Middleton, Lancs.

Alderman WALTER CRADOC DAVIES, town clerk of Pwllheli, has been appointed Deputy Lieutenant of Caernarvonshire.

Mr. EDWARD VICTOR HARTLEY, senior assistant solicitor to the county borough of Reading, has been appointed senior assistant solicitor in the town clerk's department at Huddersfield.

Mr. F. E. WARBRECK HOWELL, general manager of the Halifax Building Society and formerly town clerk of Manchester and Wolverhampton, has been appointed vice-chairman of the Cwmbran New Town Development Corporation.

Mr. W. ELKIN PLATT, of Manchester, has been elected a director of Oldham & Son, Ltd., Manchester, manufacturers of storage batteries. Mr. Platt is the company's legal adviser.

Mr. K. H. WALKER, of Hampton Hill, Middlesex, has been appointed assistant solicitor in the clerk's department of the Monmouthshire County Council.

Judge CLEMENTS will retire from his office as a county court judge at the end of December. The Lord Chancellor has decided to appoint Sir HENRY BRAUND, formerly a judge of the High Court at Allahabad, to be a judge of county courts, and has made the following arrangements to take effect on 1st January, 1950 : Judge NEAL, M.C., to be judge of Circuit 49 (Kent) ; Judge Sir HENRY BRAUND to be judge of Circuit 46 (Willesden).

The Lord Chancellor has appointed Mr. JOHN FAITHFUL PENRHYS EVANS, the registrar of the Leicester, Ashby-de-la-Zouche and Loughborough county courts and district registrar in the district registry of the Hugh Court of Justice in Leicester, to be, in addition, registrar of the Melton Mowbray and Oakham county courts as from 1st December, 1949.

The Lord Chancellor has appointed Mr. EDWIN ARTHUR EVERETT to be the registrar of the Ilford, Brentwood, Grays Thurrock and Southend-on-Sea county courts as from the 1st December, 1949.

Personal Notes

Mr. Harold Bennett, solicitor, of Macclesfield, was married on 21st November to Miss Sheila Baker, of St. Leonards-on-Sea.

Mr. Donald John Baron Jarvis, solicitor, of Sheffield and Rotherham, was married on 24th November to Miss Frances Mary Fenwick of Sheffield.

Mr. Walter Hylton Jessop, solicitor, of Cheltenham, was married on 26th November to Miss Mollie Gwendolen Hervey of Cheltenham. Mr. Jessop is a cousin of Gilbert Jessop, the famous Gloucestershire and England batsman, and has himself played for the county on several occasions.

An amateur dramatic performance which has just completed a successful week's run at His Majesty's Theatre, Carlisle, had a distinct legal flavour. It was the annual production which Mr. Lionel Lightfoot, solicitor, Carlisle, organises in aid of charities. The play "The Blind Goddess" deals with a libel action, has many court scenes and was written by Sir Patrick Hastings. Mr. Lightfoot produced the play and took the leading part as a counsel and parts were taken by Mr. Myles Carter, another Carlisle solicitor, and Mr. A. C. Hetherington, deputy clerk to the Cumberland county council. Mrs. Lightfoot and Mrs. Carter were also in the cast.

Alderman W. F. Long, of Bath, recently celebrated his jubilee in the legal profession, having been admitted a solicitor in November, 1899.

Mr. I. M. B. Mendus, solicitor, of Workington, gave an interesting account of a hitch-hike with his wife through France and Italy during the summer, when he was the guest speaker at the Workington Rotarians meeting. Mr. Mendus was a prisoner of war in Italy for eighteen months.

Miscellaneous

Orders in Council in respect of the Double Taxation Arrangements with Basutoland, the Bechuanaland Protectorate and Swaziland relating to taxes on income were made on 25th November and have now been published as S.I.s 1949, Nos. 2197, 2198 and 2199 respectively.

H.R.H. Princess Elizabeth, Duchess of Edinburgh, has expressed interest in the New Towns, and arrangements have been made for her to visit Crawley, a representative New Town, on the 25th January, 1950. Her Royal Highness will formally open and name the main carriageway of the industrial area and will inspect work in progress on houses and factories in the New Town. She will be received by the Minister of Town and Country Planning, and will be the guest of the Crawley Development Corporation at a luncheon at which she will meet the chairmen of the other New Towns. Later in the day there will be a civic ceremony at Crawley itself.

Wills and Bequests

Mr. S. J. Attenborough, solicitor, of London, left £82,377.

Mr. E. B. Kite, solicitor, of Taunton, left £28,988.

Mr. F. G. Rye, solicitor, of Thames Ditton, left £208,064.

Mr. H. H. Scott, solicitor, of Cheltenham, left £27,192.

OBITUARY

MR. A. E. HINGLEY

Mr. Alfred Edward Hingley, solicitor, of Eastbourne, died on 22nd November at the age of 81. He was admitted in 1896.

MR. C. A. LAWFORD

Mr. Charles Aikin Lawford, M.C., senior partner of Messrs. Boodle, Hatfield & Co., of London, W.1, died at Ditchling on 23rd November, aged 70. He was admitted in 1903.

MR. B. B. WRIGHT

Mr. Bryans Brunswick Wright, senior assistant solicitor to Cumberland County Council, died on 16th November, aged 53. He was admitted in 1940.

SOCIETIES

The Annual General Meeting of the WEST SURREY LAW SOCIETY was held on 25th November, at the Guildhall, Guildford. The officers of the Society who were elected for the ensuing year are as follows: President, Miss W. Lewis; Vice-President, Mr. T. K. Dobson; Hon. Treasurer, Mr. B. C. W. Hart; Hon. Secretary, Mrs. B. Littlewood.

The first annual dinner and dance of the MID-SURREY LAW SOCIETY was held at Putney on the 11th November, 1949. Mr. A. F. Stapleton Cotton (President of the Society) and Mrs. Cotton presided over the function. The guests included the Attorney-General and Lady Shawcross, Judge and Mrs. Wilfred Clothier, the Colonial Secretary and Mrs. Creech Jones, Mr. H. Nevil Smart (President of The Law Society) and Mrs. Smart, Mr. C. Edgar Shelly (President) and Mrs. B. Littlewood (Hon. Secretary) of the West Surrey Law Society, Mr. S. C. T. Littlewood (Founder President of the Society), Mr. J. Marten (Hon. Secretary of the Croydon and District Law Society) and Mrs. Marten, the Mayor of Wimbledon Major W. Hamlin and Mrs. Hamlin, Mr. A. W. Forsdike (Chairman of the Mid-Surrey Law Society's social sub-committee, which arranged the dinner) and Mrs. Forsdike, and Mr. G. A. Smith (Hon. Secretary and Treasurer) and Mrs. Smith. Mr. Littlewood proposed the toast of the Bench and Bar, and the Attorney-General replied. Mr. Cotton proposed the toast of The Law Society and Mr. Nevil Smart replied, and referred to the Mid-Surrey Law Society as a lusty infant. Dancing and entertainment completed a most successful gathering.

At the Annual General Meeting of the LEICESTER LAW SOCIETY on the 24th November, 1949, which was attended by forty-nine members of the society, Mr. Cecil F. Bray (Leicester), Mr. G. Day Adams (Leicester) and Mr. B. E. Toland (Leicester) were elected as president, vice-president and hon. librarian respectively for the ensuing year. The following other officers were re-elected: Mr. S. H. Partridge, hon. treasurer, and Mr. Newton Beare, hon. secretary.

The meeting was preceded by a luncheon given by the retiring president, Mr. C. E. Crane (Ashby-de-la-Zouch), attended by the officers and committee of the Society, at which Mr. T. G. Lund, the Secretary of The Law Society, Mr. S. E. Wilkins (Aylesbury), and Mr. G. Corbyn Barrow (Birmingham), members of the Council of The Law Society, and Mr. H. Reeve Allerton, President of the East Midland Association of Law Societies, were guests. These gentlemen subsequently attended the annual meeting and Mr. T. G. Lund addressed the society's members on the practical aspects of the Legal Aid and Advice Act, 1949.

At a gathering of twenty-three members and visitors in Grays Inn Common Room, on Monday, 28th November, 1949, the UNITED LAW SOCIETY debated the motion: "That Man is what Woman makes him." Miss Megan Jones opened the discussion with arguments to show how man's whole life is influenced by mothers, sweethearts and wives, and backed her arguments with many apt quotations. Miss J. M. K. Simmonds opposed the motion on the ground that man and woman are complementary and that if it were true that man was so influenced by woman, man would have treated woman much better than he had done through the ages. There also spoke Messrs. F. H. Butcher, J. N. Collins, A. Garfitt, S. E. Redfern, O. T. Hill, Costain, J. R. Bracewell, L. Cullen, Burton, C. H. Pritchard, Bishop and Miss F. Burman. Miss Jones replied and the motion was carried by three votes. The society announces the following subject for debate in December: Monday, 12th December, 1949 (Guest night. Members are invited to bring one or more guests), "That this House would approve of legislation controlling spendthrift husbands and fathers in the management of their property."

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